

## SPECIAL ASPECTS OF THE DEBTOR'S REAL ESTATE PROPERTY SALE IN ENFORCEMENT PROCEEDINGS

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**Abstract.** The article analyzes the provisions of the legislation on enforcement proceedings governing the procedure for the sale of immovable property of a debtor in enforcement proceedings. The lack of legal regulation of electronic bidding and other factors that lead to violations of the rights of claimants, debtors and to a large number of legal proceedings related to the recognition of tenders as invalid. The general methodological basis of the study was the general scientific (dialectical) method of cognition, the comparative legal, logical methods that made it possible to consider the peculiarities of the sale of the debtor's real estate in enforcement proceedings.

The article presents the authors' own views and analyzes the theoretical studies of scientists in this field. The theoretical provisions formulated in the article can find application in the course of further scientific research in the field of improving the mechanism of enforcement proceedings in this area.

**Keywords:** provisions of the legislation, legal regulation of electronic, analyzes the theoretical.

### 1 Introduction

Real estate, the role and economic importance of which in the economy of the state as a whole and its citizens, in particular, is invaluable, is one of the most common objects of foreclosure in enforcement proceedings.

In accordance with Part 4 of the Article 2 of the Civil Procedure Code of the Russian Federation, the tasks of civil proceedings are the correct and timely consideration and resolution of civil cases in order to protect violated or disputed rights, freedoms and legitimate interests of citizens, organizations, rights and interests of the Russian Federation, constituent entities of the Russian Federation, municipal entities, and other entities that are subjects of civil, labor or other legal relations.

The execution of court decisions, in which one of the parties to enforcement proceedings is often faced with problems of real estate sale, plays a large and significant role.

At the same time, the constantly changing economic relations over real estate, their material and legal regulation, as well as the continuing shortcomings of the procedural and legal regulation of the sale of real estate, give rise to many problems in law enforcement.

In this regard, the analysis of the provisions of the legislation on enforcement proceedings, identifying the features and the most important problems in practice that govern the procedure for selling the property of the debtor is relevant and significant. The problems under consideration are also found in foreign law and order (Slovak Republic, 2017).

It is necessary to take into account the fact that the sale of real estate is a deprivation of property guaranteed by the Constitution of the Russian Federation. Therefore, it is necessary to ensure that all changes in legislation do not lead to unconstitutional results (Brits, 2013).

Thus, the development of the special features of the realization of real estate of debtor in the executive production, on the basis of civil-lawful status of object, the defects of the legislation, which regulates this question, under the contemporary conditions is necessary.

### 2 Methods

The purpose of enforcement proceedings is correct and timely.

Execution of decisions of both courts and other competent authorities. The sale of the debtor's property at public auction leads to the direct execution of the court decision and is the final

stage of the entire process of both legal proceedings and enforcement proceedings.

In this article, methods of real estate sale are investigated when foreclosed on it in the framework of enforcement proceedings. Moreover, it was established that the current legislation of the Russian Federation on the organization and holding of tenders for the sale of property of the debtor, consisting of a small number of general rules of the Federal Law "On Enforcement Proceedings" and the Civil Code of the Russian Federation, as well as approved by the Federal service of the bailiffs of Russia and by the Federal Agency for the management of state property is insufficient.

Lack of legal regulation of such important issues encountered in practice as: the print publication is not defined as an official publication that publishes information required by the law on enforcement proceedings; lack of a legal basis for conducting tenders in electronic form; the requirement to submit a proposal with a price offer or a desire to submit a price quote as part of the application is not regulated by the legislation of the Russian Federation; submitting bids at a closed price in open bidding (violates the principle of openness); the procedure for accepting applications during public holidays and weekends is not regulated (the total time for receiving applications is indicated); the place for accepting bids has not been established (only the issue of the venue of the tender

The economic aspect of the relevance of the topic of this study is determined by the fact that real estate is one of the fundamental objects of civil turnover.

Effective interaction of the norms of many branches of law, legislative changes, in particular, the discussed combination of civil and arbitration procedural legislation, which will affect enforcement proceedings, as well as the transition to electronic document management and streamlining of procedures through the introduction of information technologies that have not been circumvented and enforcement proceedings constitute a normative aspect relevance of the topic (Jenaabadi & Issazadegan, 2014).

An indicator of the law enforcement aspect of relevance of the topic is a large number of judicial practice and discussions in the scientific literature on the implementation of the debtor's real estate in enforcement proceedings, which clearly demonstrates the many difficulties in this area and the presence of gaps in the legislation.

The methodological basis of the study was the dialectical-materialistic method of cognizing legal reality, along with which general scientific methods were also used - analysis and synthesis, which allowed the authors to identify the main approaches to understanding the substantive content of the category real estate and its implementation in enforcement proceedings; logical and private-scientific methods - system-structural, formal-legal, comparative-legal, which were used in assessing the norms that make up the subject of research and substantiating recommendations for improving the legal regulation of relations that form the subject of research (Rasooli & Abedini, 2017).

### 3 Results And Discussion

General provisions for the sale of property of the debtor are fixed in Article 87 of the Federal Law of 10/02/2007 "On Enforcement Proceedings". As rightly points out Professor D.Kh. Valeev, "the method of selling the debtor's property largely depends on the type of property" (Valeev, 2013). Part 3 of article 87 of the above law includes real estate in a special group of property to be sold through open tendering in the form of an auction. Similar rules for the sale of real estate are applied in most foreign countries (Good, 2003). Since the sale of the debtor's real estate is carried out through open bidding in the form of an auction, it makes sense to dwell on the study of the procedure for their conduct. Here it is necessary to agree with the opinion of scientists that "in the framework of enforcement proceedings, public tenders are held in

order to provoke a competition of purchase offers in order to gain the maximum price for the property being sold" (Gureev & Gushchin, 2014: Peres et al, 2018).

According to part 1 of article 89 of the law "On Enforcement Proceedings", the property of the debtor at the auction is sold by the organizer of the auction - a person or organization that has the right to conduct auction on the corresponding type of property in accordance with the legislation of the Russian Federation. The same article establishes a deadline - from the day of receipt of the debtor's property under the acceptance-transfer act to post information about the property being sold on the Internet, and about property that is sold at the auction also in the print media. In part 3 of article 90 of the law "On Enforcement Proceedings" it is established that "a notice on tendering is posted on the official website of the Russian Federation in the information and telecommunication network" Internet "to post information on tendering determined by the Government of the Russian Federation." Until such a site is defined, this notice should be posted on the organizer's website on the Internet and published by him in a printed periodical determined by the Government of the Russian Federation. Information on bidding should be available to interested parties for free. To date, such a print publication is not defined.

Currently, an Internet site has been defined for posting information on tendering for the sale of mortgaged property of the debtor in accordance with the Rules for sending information on tendering for the sale of mortgaged real and movable property during enforcement proceedings, as well as on tendering for the sale of mortgaged movable property in extrajudicial the procedure for placement on the Internet information and telecommunication network, which are approved by the Decree of the Government of the Russian Federation of 30/01./2013 No. 66 - [www.torgi.gov.ru](http://www.torgi.gov.ru) (Decree of the Government of the Russian Federation, 2013). Earlier in law enforcement practice, there was a position according to which the procedure for posting information on conducting public tenders on the website [www.torgi.gov.ru](http://www.torgi.gov.ru) should be mandatory only for tenders related to the sale of mortgaged property. However, the joint Order of the Federal Bailiff Service No. 527, of the Federal Agency for State Property Management No. 348 of September 15, 2014 amended the above Procedure, by which now this rule should apply to all tenders for the sale of property of the debtor. In our opinion, posting a notice on tendering for the sale of property, both unencumbered and encumbered with a pledge, on one site for all participants in the procedure for selling property through tendering will be convenient. Currently, in fact, information on the sale of property of debtors as part of enforcement proceedings is posted on the website of the Federal court bailiff service of Russia <http://fssprus.ru/>, of the Federal Agency for State Property Management <http://www.rosim.ru/> and on the above resource [www.torgi.gov.ru](http://www.torgi.gov.ru).

Courts often consider invalidation of tenders in connection with improper notification of potential buyers about tendering. The Presidium of the Supreme Arbitration Court of the Russian Federation on this issue clarified in paragraph 2 of its Information Letter dated December 22, 2005 No. 101, according to which information on tendering reported in violation of the established deadline reduces the possibility of potential buyers participating in tenders and, therefore, affects on the formation of selling prices. Clause 3 of this letter also states that the absence of information in the tender notice that is provided for in clause 2 of Article 488 of the Civil Code of the Russian Federation is a violation of the procedure for conducting tenders and the basis for declaring tenders invalid (Gayfutdinova, 2016).

There is a problem with the practice of applying the Order of the Russian Federal Property Fund dated November 29, 2001 No. 418 "On approving the Procedure for organizing and conducting tenders for the sale of seized and confiscated property, as well as confiscated, ownerless and other property that has been transferred to the ownership of the Russian Federation". For example, in the opinion of the Federal Arbitration Court of the Moscow District, the said Order of the Russian Federal Property

Fund was terminated due to the liquidation of the Russian Federal Property Fund and the publication by the Federal bailiff service of Russia and of the Federal State Property Management Agency (Federal Property Management Agency) Order No. 347/149 of July 25, 2008 The Arbitration Court of the Saratov Region also maintained this position. However, there are many judicial acts issued taking into account the said Order of the Russian Federal Property Fund dated November 29, 2001 No. 418. So, for example, the Decree of the Presidium of the Supreme Arbitration Court of the Russian Federation of 24.07.2012 No. 5574/12. At the same time, in the decision of the Federal Antimonopoly Service of Russia dated 05/24/. 2013 No. T-80/13 states that "...The Federal Property Management Agency is not the assignee of the Specialized State Institution under the Government of the Russian Federation "Russian Federal Property Fund" and, therefore, the effect of the document "On Approving the Procedure for Organizing and holding tenders for the sale of seized and seized property, as well as confiscated, ownerless and other property, circulated into the ownership of the Russian Federation", approved by the RFBR Order of November 29, 2001 No. 418 does not apply to the activities of the Federal Property Management Agency." Thus, we can state that the question of the effect of the decree of the Russian Federal Property Fund dated November 29, 2001 remains unclear. № 418 .Previously, the procedure for conducting tenders in enforcement proceedings was generally regulated by the order of the Russian Federal Property Fund dated November 29, 2001 No. 418 "On approval of the Procedure for organizing and conducting tenders for the sale of seized and confiscated property, as well as confiscated, ownerless and other property transferred to the ownership of the Russian Federation".

However, in connection with the problem of the operation of this document that we noted earlier, this procedure is actually regulated by a very small number of norms of Articles 447-449 of the Civil Code of the Russian Federation and Chapter 9 of the Law on Enforcement Proceedings. Approved by the Federal Court Bailiff Service of Russia and by the Federal Agency for State Property Management the Procedure also does not eliminate this defect. Specialists also note that the lack of regulation of the bidding process during enforcement proceedings leads to numerous violations of the rights of both claimants and debtors, as well as a significant number of litigations related to invalidation of tenders (Medvedev & Nasonov, 2010). Law enforcement practice also indicates the presence of legislation gaps in the regulation of the auction procedure in enforcement proceedings. The lack of a clear mechanism for the protection of both parties when enforcing property is often the subject of discussion not only in Russia but also abroad.

#### 4 Summary

Analyzing the above, we identified the following unresolved issues that are most important in practice, which lead to violations of the rights of both claimants and debtors, and to a large number of litigations related to invalidating tenders: there is no official print publication for publishing information, prescribed by law on enforcement proceedings; there is no legal regulation of electronic bidding; the procedure for submitting a price offer is not sufficiently regulated, which violates the principle of openness when submitting offers at a closed price.

In this regard, we propose introducing into the Law "On Enforcement Proceedings" a special chapter that would regulate in detail the procedure for conducting tenders within the framework of enforcement proceedings.

Also, given the active development and practical convenience of information technology, we offer: to fully switch to the electronic form for publishing notices of all tenders in enforcement proceedings; use the electronic bidding form as the only form of sale of the debtor's real estate in enforcement proceedings.

#### 5 Conclusions

The procedure for foreclosing on real estate, in general, is subject to the general rules of enforcement proceedings and includes three

standard stages: arrest (Odintsova, 2017), assessment and implementation. Due to the peculiarities of the civil law status of real estate, in practice, when foreclosing on real estate, a number of problems arise. In the course of the study, it was revealed that the procedure for foreclosing on real estate needs special legal regulation.

This study revealed that the current legislation of the Russian Federation on the organization and conduct of tenders for the sale of property of the debtor, consisting of a limited number of general norms of the law on enforcement proceedings and the Civil Code of the Russian Federation, as well as approved by the Federal service of the bailiffs of Russia and of the Federal Agency for management of state property of the Order is insufficient, which, ultimately, leads to a violation of the rights of both parties to enforcement proceedings, and to a lot of litigation.

The reasons for the absence and new law enforcement practice, in our opinion, are the complexity of the legislation and the lack of official explanations. It seems that amendments to the current legislation, as well as the publication of official explanations could give impetus to the application of law enforcement practice.

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#### Literature

1. Brits, R.: Sale in Execution of Mortgaged Homes May Not Result in Arbitrary Deprivation of Property, *South African Journal on Human Rights*, Vol.29(3), 2013, 536-553 p.
2. Decree of the Government of the Russian Federation.: of January 30, 2013 No. 66 "On the Rules for sending information on tenders for the sale of mortgaged real estate during enforcement proceedings for placement on the Internet", *Digest of legislation of the Russian Federation*. No 5. 2013, 406 p.
3. Gureev, V.A., Gushchin, V.V.: *Executive production: a textbook*. 4th ed., Rev. and add. M., 45, 2014. 168 p.
4. Gayfutdinova, R.Z.: *Enforcement proceedings: features of foreclosure on real estate [Electronic resource]: monograph under the editorship of D.H. Valeeva*. The electron. Dan. Moscow: STATUT, 2016. 158 p. Access mode: <https://e.lanbook.com/book/92540>.
5. Good, S.L.: THE AUCTION ALTERNATIVE, *Commercial Investment Real Estate Journal*. 22(3), 2003. 31 p.
6. Medvedev, Yu.M., Nasonov, A.M.: *Auctions: conducting, participation, the judicial disputes: Reference book of investor*. the 2nd publ., 2010. 224 p.
7. Odintsova, M.I.: Arrestment as the Interim Measure in Enforcement Proceedings, *Herald of Enforcement Proceedings*, Vol. 3 (1), 2017, 86-89 p.
8. Slovak Republic.: *Enforcement proceedings rules*. *International Financial Law Review*, Jan 26, 2017.
9. Valeev, D.: *Commentary on Federal Law of October 2, 2007 "On Enforcement Proceedings"*, *Bulletin of Civil Procedure*. No 1, 2013. 157 p.
10. Rasooli, M., Abedini, M.: The Relationship between Organizational Support and Job Satisfaction of Experts and Managers of Islamic Azad University of Qeshm and Subsidiaries (International Units, Medical, Sama, Hormuz and Khamir). *Dutch Journal of Finance and Management*, 1(2), 2017. 42 p. <https://doi.org/10.29333/djfm/5818>.
11. Jenaabadi, H., Issazadegan, A.: The analysis of personality features, coping strategies and stress relations in drug addicts, *UCT Journal of Management and Accounting Studies*, 2(1), 2014. 22-26 p.
12. Peres, P., Moreira, F., Mesquita, A.: Are Really Technologies at the Fingers of Teachers? Results from a Higher Education Institution in Portugal. *Journal of Information Systems Engineering & Management*, 3(1), 2018. 08 p.

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