

был предупрежден подрядчиком об их особых свойствах, могущих повлечь их утрату (повреждение). Незнание подрядчиком особых свойств материала (вещи) не освобождает его от ответственности [4;171].

В наше время большинство подрядчиков настаивают на предоплате, законом данное требование обосновывается лишь с точки зрения возможности, то есть необходимость аванса, остается по усмотрению сторон, заключающие договорные отношения. На площадках, сайтах, объявлениях полно субъектов осуществляющих бытовой подряд, в то же время, можно и наткнуться на субъектов, которые могут себе позволить заполучить аванс и сбежать с объекта от выполнения своих обязательств, также имеются организации, которые берут аванс, начинают какую-то деятельность и всеми возможными способами заполняют смету несуразными видами работ, к примеру перед субъектом стоит задача возвести перегородки из гипсокартонных листов, субъект начинает считать один вид работы, как отдельные виды, каждый распилил металлопрофиля, шумоизоляцию, встраиваемую в перегородку, каждый распилил гипсокартонных листов и так далее.

Думаем, в целях надлежащего выполнения обязательств сторонами будет не лишним включением в обязанность подрядчика и заказчика заключение договора бытового подряда строго в письменной форме, тогда и граждане станут сознательнее относиться к чужому труду и подрядчики будут более ответственно выполнять все условия договора, а за помощью в заключении такого договора, стороны могут обратиться к юристам, что может уберечь их время, нервы и деньги, не смотря на оплату услуг юриста, эта стоимость может стать ничтожной относительно полученного ремонта ненадлежащего качества, или в целом его неисполнения в полном объеме или части.

На основании вышеизложенного, можно прийти к выводу, что законодательно регламентирована основа для заключения договора бытового подряда, однако этого недостаточно. На наш взгляд, заключение договора бытового подряда в письменной форме будет гарантом надлежащего исполнения обязательств обеими сторонами.

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FUNDAMENTALS OF THE LEGAL AGREEMENT OF EQUITY PARTICIPATION IN HOUSING CONSTRUCTION

*Turusbekova R.E., Master's student in Private law
Department of Civil and Labor law, Karaganda University named after E.A. Buketov*

Equity involvement in home development is one of the more typical ways of satisfying housing demands in the Republic of Kazakhstan and is governed by specific legislation. The definition of the extent of such legislation has been demonstrated by judicial practice and the conduct of arbitration courts to be a current concern of law enforcement.

It is possible to list some legislative laws that provide a more benevolent legal framework for such a method of addressing housing needs as equity involvement in house building. For example, Article 9 of the Law of the Republic of Kazakhstan "On Equity Participation in Housing Construction," dated July 7, 2006 No. 180-III ZRK (Law on Equity Participation in

Housing Construction), paragraph 6 states that if the shareholder who has entered into an agreement on equity participation in housing construction pays the contract price in full volume in accordance with the contract, then a further change in the price per 1 square meter of the total area of the house is not permitted. In contrast to the provisions of paragraph 1 of Article 652 of the Civil Code of the Republic of Kazakhstan, which state that, unless otherwise specified in the contract, equity participation in housing construction relationships entail the risk of accidental loss or accidental damage to the construction site due to force majeure before the expiration of the deadline for delivery of the work established by the contract [1].

However, the Law on Equity Participation in Housing Construction in Kazakhstan has also shown certain issues with establishing its extent of applicability and varied interpretations of its legal rules in settling disputes.

In accordance with Section 3 of Article 2 of the Law on Equity Participation in Housing Construction, this Law does not apply to relations relating to investments in the construction of real estate and individual housing that are not based on an agreement on Equity Participation in Housing Construction. It is impossible to deem the Law successful in its declared form, which establishes the boundaries of its applicability. Individual construction of homes in particular falls under the category of real estate investment.

It is impossible to deem the Law successful in its declared form, which establishes the boundaries of its applicability. Construction of individual homes in particular falls under the category of real estate investment. Regarding this, it is difficult to oppose relationships that are not based on an equity participation agreement and are involved with 1) investment in real estate development and 2) individual house building. The law's preamble states that it regulates public relations surrounding the activities of organizing the construction of residential structures by luring capital from individuals and legal entities for equity participation in their construction. It also establishes safeguards for the protection of the rights and legitimate interests of the parties to the agreement on equity participation in housing construction [2].

At the same time, there are several legal forms in which investments in residential amenities can be made. The Law on Equity Participation in Housing Construction's implementation is based on the legality of the contract mediating the connection, according to the standards of the Law that have been examined. The existence of grounds for qualifying the grounds for the emergence of legal relations arising from the investment of funds, such as an agreement on equity participation in housing construction, is the primary criterion for determining the scope of the Law on Equity Participation in Housing Construction.

To further consider the fundamentals of equity participation in housing construction, it is needed to define what it is as well as what the legal agreement is. Equity participation in housing construction is the relationship of the parties to an agreement on equity participation in housing construction for the purpose of constructing residential buildings. Agreement on equity participation in housing construction is an agreement concluded between a developer, a project company, a shareholder and an agent bank that regulates legal relations related to the construction of residential buildings by attracting money from equity holders.

Table 1. Responsibilities based on paragraph 1 of Art. 7 under an agreement on equity participation in housing construction [3]

Subject	Responsibility
Developer	The developer agrees to coordinate the construction of a residential building within the time frame specified in the agreement on equity participation in housing construction and to ensure that the construction object's quality indicators are upheld throughout the warranty period. These indicators are found in the design (design and estimate) documentation and the agreement on equity participation in housing

	construction.
Project Company	The project firm agrees to create a residential building within the time frame specified by the equity participation agreement in housing construction and, after receiving approval to operate it, deliver the appropriate share of the residential building (residential building) to the shareholder.
Shareholder	If there is a permit to erect the residential building, the shareholder agrees to enter into a bank account agreement and deposit funds on the shareholder's deposit in the amount and according to the terms specified in the agreement on equity participation in housing construction, and accept a share in the residential building;
Agent bank	In accordance with the conditions of the bank account agreement, the agent bank agrees to accept the shareholder's deposit with interest equal to or more than the refinancing rate of the National Bank of the Republic of Kazakhstan.

As a result of the foregoing, it is evident that in order for a contract mediating relations for the construction and investment of funds in residential facilities, as well as the transfer to a shareholder of his share in a residential building, to qualify as a contract of equity participation in housing construction, the Law on Equity participation in Housing Construction's provisions must be applied. It is crucial to ascertain not only the subject composition (which involves four parties: the developer, the project company, the agent bank, and the shareholder), but also the subject of the contract in addition to the main obligations and corresponding rights of each participant in light of the subject composition and subject of the contract. Specifically, for the developer, organizing the construction of a residential building; for the project company, organizing the construction of a residential building and transferring the corresponding share to the shareholder after obtaining permission to put the residential building into operation; and for the shareholder, fulfilling a financial obligation and accepting a share in a residential building in the presence of a permit to put the residential building.

An agreement on equity participation in housing construction defines a share in a residential building (residential building) as a portion of a residential and/or non-residential premises created in line with the construction project of a residential building (residential building). The right of common shared ownership of common property in a residential building also develops when similar rights of private property—in residential and (or) non-residential premises—do. A residential building is defined as a structure that primarily consists of residential premises, as well as non-residential premises and other parts that are common property, under an agreement on equity participation in housing construction (sub. 11 of the Law on Equity Participation in Housing Construction). In addition, the mandatory terms of an agreement has been identified in Figure 1.

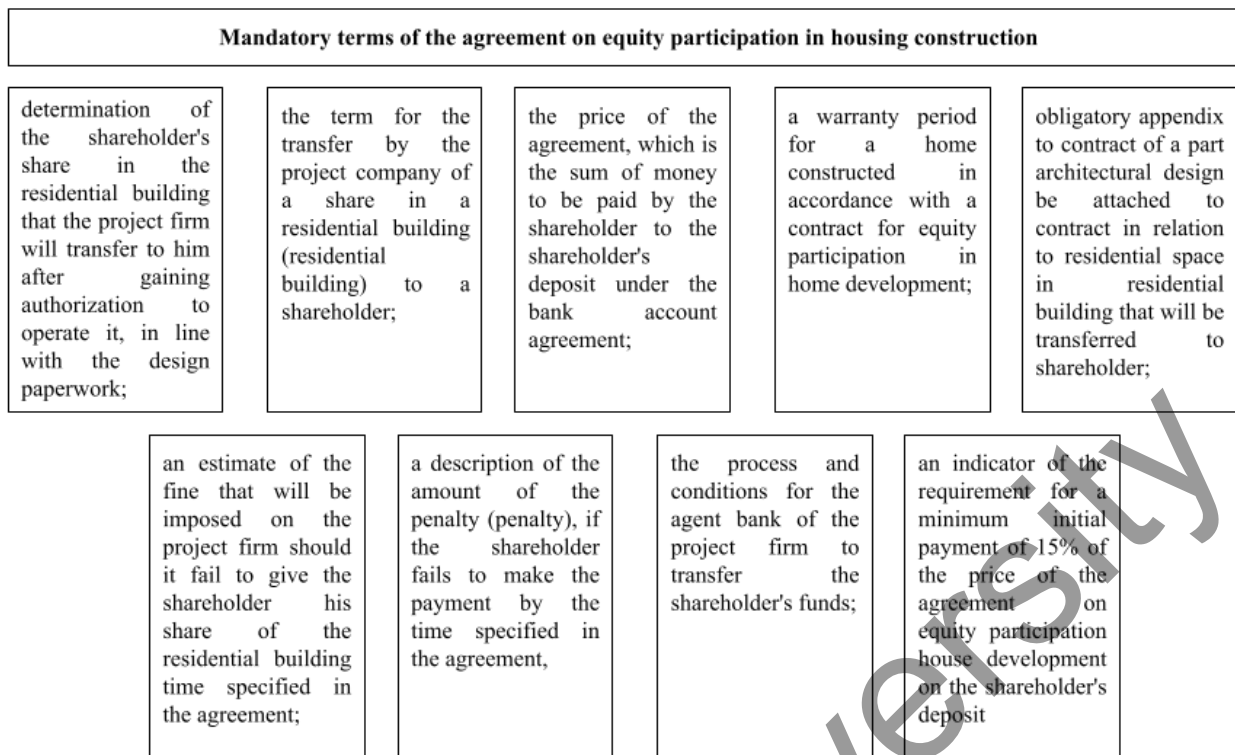


Figure 1. Mandatory terms of the agreement on equity participation in housing construction.

The mandatory terms of a legal agreement helps us understand more about the nature of the agreement. The fact that a contract for equity participation in housing construction is recognized as an investment contract does not preclude the necessity or possibility of identifying the contract's type or degree of affiliation with other well-known civil law contracts, or of recognizing the contract as independent. The Republic of Kazakhstan's Civil Code at the moment does not have any rules pertaining to an equity participation agreement as a standalone contract. The Equity Participation in Housing Construction Law does not entirely control new relationships. Depending on the relationships to which the pertinent norms are subject to application, the subsidiary application of the provisions of the General Part of the Civil Code of the Republic of Kazakhstan also does not preclude the application of the norms of sales contracts, work contracts, and (or) other contracts governed by the Special Part of the Civil Code [4].

The contract for equitable participation in house building has aspects of several contractual institutions, according to the legal analysis of the issue, the parties' rights and responsibilities, and other contract features. In this regard, a contract for equity participation in housing construction currently corresponds to the characteristics of a mixed contract and that, in the event of regulatory gaps in particular relations, the relevant rights and obligations can be applied by the norms of that contractual institution that most closely match the specifics of the emerging relations. So, for example, we believe that a construction contract is consistent with such rights and obligations of the parties to the equity participation agreement as the developer's obligations to ensure the quality of the indicators of the construction object specified in the design (design and estimate) documentation and the agreement on equity participation in housing construction [5].

The aforementioned practical and theoretical issues with the legal regulation of relationships involving equity participation in housing construction demonstrate the importance of determining the subject and legal nature of the contract that mediates the pertinent relationships as well as the scope of the Law on equity participation in housing construction. The capacity to defend housing rights in a stable and effective manner ultimately rests on the ability to clarify the rights and duties of the parties to the equity participation agreement in housing building.

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Buketov University