

8. Краудфандинг [Электронный ресурс] // Википедия. — Режим доступа: <https://ru.wikipedia.org/wiki/>

9. Федеральный закон Российской Федерации от 2 августа 2019 года №259-ФЗ «О привлечении инвестиций с использованием инвестиционных платформ и о внесении изменений в отдельные законодательные акты Российской Федерации». - [Электронный ресурс].- Режим доступа: https://base.spinform.ru/show_doc.fwx?rgn=117701

LEGAL MECHANISMS IN SHARED-EQUITY CONSTRUCTION

Turusbekova R.E., second-year master student in private law, Karaganda University named after academician E.A. Buketov

A vibrant and developing segment of the real estate market, shared-equity building is becoming more and more well-known as a calculated method of investing in and developing real estate. This creative idea entails a number of parties with various interests getting together to work together towards the realization of a building project as the shared objective. However, every shared-equity building project has a complex web of risks at its core that must be carefully allocated, managed, and mitigated. The smooth development of these kinds of projects depends on how well developers, investors, consumers, and other stakeholders can manage these risks fairly.

The increasing popularity of shared-equity construction has necessitated a thorough comprehension of the legal framework supporting it. In order for parties to participate in such initiatives with confidence that risks are fairly distributed and handled, legal frameworks are necessary. This paper explores the complex world of legal processes in the context of shared-equity creation. It aims to clarify the many legal frameworks — contractual, insurance, regulatory, and disclosure — that specify obligations and potential liabilities. This investigation, which has a strong emphasis on risk allocation and management, seeks to shed light on the legal and practical aspects of shared-equity building while also providing helpful advice for those navigating this challenging terrain.

With shared-equity construction projects becoming common in many countries and each with its own set of legal, economic, and regulatory quirks, this essay provides a thorough rundown of the legal environment around risk distribution. Through an analysis of diverse legal procedures implemented in different countries, the aim is to offer an international viewpoint on the obstacles, achievements, and developing patterns within this ever-changing domain.

We start by breaking down the basic legal frameworks that underpin the shared-equity development process, such as insurance, contracts, risk allocation clauses, due diligence, and regulatory compliance. Each of these processes is essential in determining how risk and responsibility are shaped, and their interactions affect every project participant in a significant way. In a time of fast urbanization, pressing ecological issues, and a constantly changing real estate landscape, shared-equity development serves as an exemplar of cooperative innovation. Nevertheless, the success of a shared-equity construction project is dependent on the effectiveness of the legal structures that oversee it.

Contracts and Agreements. Construction contracts are legally binding agreements between parties involved in a shared-equity construction project. These parties typically include the developer, investors, contractors, buyers, and other stakeholders. The terms and circumstances under which the project will be carried out are outlined in construction contracts. They outline each party's tasks and obligations as well as project deadlines, payment plans, dispute resolution procedures, and — most importantly — how risks are divided up between the parties. Particular provisions in construction contracts assign different risks, including delays, overruns in costs, modifications to the design, and performance problems. To handle various facets of risk distribution, indemnity clauses, force majeure clauses, default termination terms, and change order provisions are frequently employed [1].

Some of the main contracts and agreements that structure the legal framework in the shared-equity construction projects are presented in Figure 1 and will be discussed next.

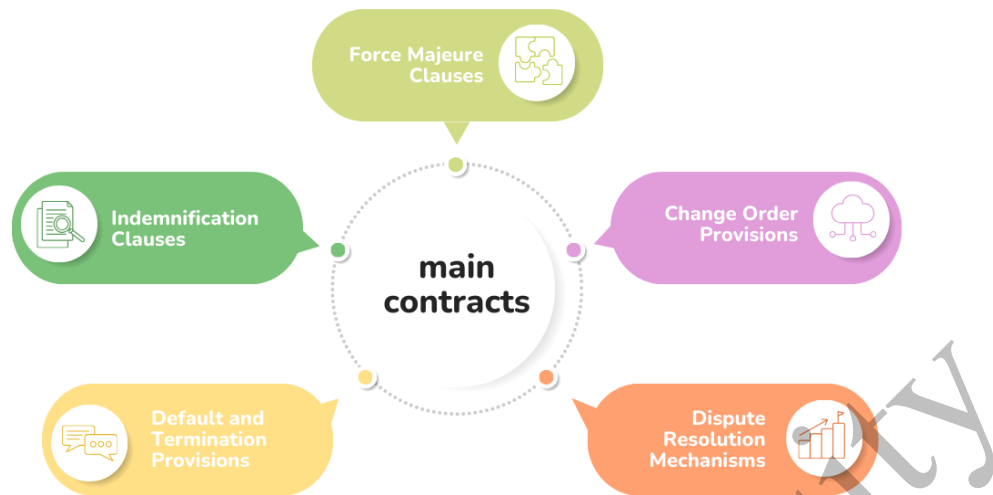


Figure 1. Common contracts and agreements in shared-equity construction projects

Indemnification Clauses. These provisions outline who is in charge of paying for losses or damages brought on by particular risks. An indemnity provision can, for instance, mandate that the developer reimburse the other party (the investor, for example) for any monetary damages incurred if the developer causes a construction delay. Indemnity clauses are a typical tool used in construction contracts in the United States for risk allocation. For example, according to statistics from a research conducted by the American Institute of Architects (AIA), indemnity clauses are found in 91% of standard form contracts in the United States [2].

Force Majeure Clauses. These provisions list uncontrollable circumstances — like strikes, natural catastrophes, or governmental actions — that release the parties from their contractual duties. Force majeure provisions clearly state that neither party is responsible for non-performance under such conditions and allocate the risk of such situations. Force majeure clauses were a matter of contention globally during the COVID-19 epidemic. According to a DLA Piper investigation, force majeure provisions were included in over 95% of the construction contracts examined in China. The pandemic's financial effects and project delays were addressed by invoking these provisions [3].

Default and Termination Provisions. Contracts contain provisions that allow one party to end the arrangement if the other fails to perform. By sharing the risk, this arrangement guarantees that the defaulting party will pay the price for breaching the agreement, including fines.

Change Order Provisions. These clauses deal with modifications to the project's initial scope. They divide the chance of unforeseen expenses and delays brought on by these adjustments. Change order provisions, for instance, outline how revisions to the original building plans would be handled and funded in the event that a buyer demands them.

Dispute Resolution Mechanisms. Contracts frequently include the process for resolving disagreements. Arbitration, mediation, and litigation are common processes. The distribution of risk can be greatly impacted by the methodology selected, as certain approaches may give preference to one side over another.

Insurance. Insurance is a crucial legal tool for risk management and allocation in shared-equity building. Insurance plans offer monetary defense against particular dangers and possible liabilities that could appear throughout a building project. The parties engaged in an unanticipated incident might share the financial effect by using these insurance options.

Insurance policies, presented in Figure 2, are essential for reducing and distributing many kinds of risks, such as legal, financial, and operational hazards, in shared-equity building. For example, Liability insurance is a typical practice in building in the United Kingdom. According to the Association of British Insurers (ABI), insurance premiums for the construction sector in the UK

were paid in 2019, totaling around £3.4 billion. The coverage included both public liability and employers' liability insurance [4].

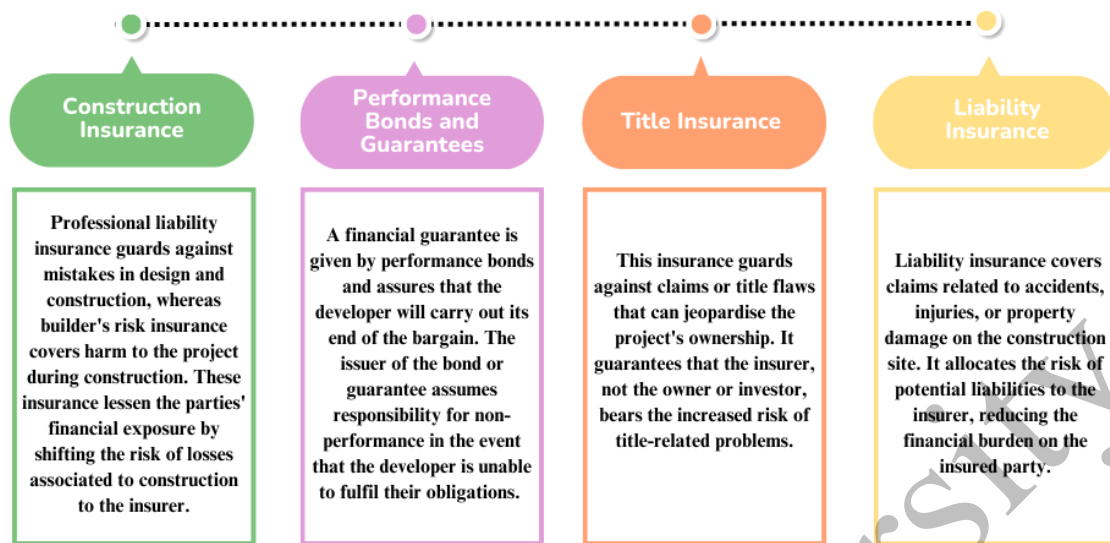


Figure 2. Insurance types in shared-equity construction projects.

These policies help create a more effective risk management plan by protecting the parties involved and guaranteeing the project's financial stability and success by shifting the financial weight of particular risks to insurers.

Risk Allocation clauses. To clearly assign certain risks, contracts can also include separate risk allocation provisions in addition to specific terms. These provisions cover a wide variety of potential problems and offer a thorough structure for allocating risk.

Due Diligence and Disclosure Obligations. Parties may be required by legal procedures to do due diligence and provide information. For instance, developers would be required to notify purchasers and investors of any substantial risks and project flaws. By doing this, it is made possible for everyone to understand and evaluate the risks they are accepting. In several Canadian jurisdictions, there are stringent disclosure requirements. For example, in Ontario, builders must give purchasers information about building problems and a new house guarantee. Tens of thousands of newly constructed houses are registered for warranty coverage annually, according to statistics data from Tarion Warranty Corporation, an Ontario new home warranty provider [5].

Regulatory Compliance. Legal procedures may stipulate that certain rules and construction norms must be followed. Legal fines and obligations may result from breaking these regulations, so shifting the risk of noncompliance to the offending party.

With its cooperative and multi-stakeholder structure, shared-equity construction is a dynamic and cutting-edge method of real estate development and investment. We have explored the complex web of legal frameworks supporting shared-equity building projects in this post. Our investigation has shown how crucial a role these systems play in determining how risk is allocated and managed, which in turn ensures the long-term viability of these intricate projects.

The main legal procedures that are included in shared-equity construction have been examined throughout the paper, including insurance, contracts and agreements, risk distribution provisions, due diligence, and regulatory compliance. When carefully planned and implemented, these procedures specify the obligations, liabilities, and functions of each project member. They also act as a vital framework for allocating and overseeing the many risks that building projects with shared ownership entail.

The role of legal processes is crucial as shared-equity building projects continue to change in a world characterized by growing urbanization, environmental imperatives, and shifting market

dynamics. It is clear that negotiating the complex route of shared risk, shared rewards, and shared prosperity requires a thorough grasp of and use of these systems.

In conclusion, the article has attempted to clarify the legal nuances surrounding shared-equity construction and provides stakeholders with a thorough roadmap so they may navigate this challenging terrain with assurance. The article is hoped to contribute to the long-term viability and sustainability of shared-equity building by examining the legal frameworks supporting these projects, so that the cooperative innovation that shared-equity construction symbolizes may keep thriving in the real estate and construction industries.

Bibliography:

1 Carlsson A. Shared Equity Housing. A Review of Existing Literature. 2019 Joint Center Summer Community Service Fellow. Source: https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_shared_equity_housing_lit_review_carlsson_2019.pdf

2 Diamond, M. R. (2016). Shared Equity Housing: cultural understanding and the meaning of ownership. In Routledge eBooks (pp. 37–64). <https://doi.org/10.4324/9781315553740-3>

3 Cheung, K. S., & Wong, S. K. (2019). Entry and exit affordability of shared equity homeownership: an international comparison. *International Journal of Housing Markets and Analysis*, 13(5), 737–752. <https://doi.org/10.1108/ijhma-06-2019-0059>

4 Ayoade, O., & Ahmed, S. (2019). An assessment of industry position on shared equity housing model development in the UK. *International Journal of Qualitative Research in Services*. <https://doi.org/10.1504/ijqrs.2019.103760>

5 Milstead, T. M. (2013, July 24). Preserving Mobile Home Communities through Shared-Equity Ownership Mechanisms: A Case Study of the Burnsville Land Community (BLC). <https://journals.brandonu.ca/jrcd/article/view/632>

К ВОПРОСУ О ПРИМЕНЕНИИ НОРМ ПРАВА ОБ ОХРАНЕ НАСЛЕДСТВЕННОГО ИМУЩЕСТВА

Глушкова В.С., магистрант 1-го курса, юридического факультета, Карагандинского университета имени академика Е.А.Букетова

На сегодняшний день тема по охране наследственного имущества привлекает к себе мнение ученых теоретиков и практиков и это не случайно. Ведь у каждого гражданина нашей страны есть право наследования, которое гарантируется Конституцией Республики Казахстан [1]. Это означает, что каждый вправе самостоятельно и по собственной воле распорядиться принадлежащим ему имуществом на случай своей смерти. Соответственно, нотариусы должны защищать не только возможность реализации права наследодателя завещать имущество, но и реально обеспечивать права наследников на получение наследственного имущества.

Институт охраны наследственного имущества представляет собой совокупность норм, направленных на обеспечение законных интересов предполагаемых наследников. Комплексность института охраны наследства предопределяется необходимостью организации повышенной правовой охраны субъектов наследственных отношений в виде совершения нотариальных действий. В связи с этим, на современном этапе проблема правовых гарантий, охраны и сбережения наследственного имущества приобретает экономическую и правовую значимость в условиях недостаточной урегулированности.

Актуальным и практически значимым на мой взгляд является разработка предложений по совершенствованию правового регулирования охраны наследственных прав. В частности, необходимо изучение действующего гражданского законодательства, проведение анализа правовых норм, регулирующих вопросы охраны наследственного имущества, обоснование