

# On the issue of improving the mechanism of state management of unclaimed agricultural land

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**Abstract.** The problem of transferring unclaimed land shares as a form of state management of land resources for targeted use to agricultural producers, actually cultivating farmland, is disclosed. Proposals are formulated to involve unclaimed agricultural land in the economic circulation by ensuring proper procedural notification to peasant farms or corporate agricultural organizations that actually carry out production activities within the boundaries of this administrative region with a proposal to buy out a land plot formed at the expense of unclaimed land shares and transferred by a court decision to municipal property.

## 1 Introduction

At the present stage of the development of Russian agricultural production, it is of particular importance to ensure optimal state regulation of relations with in the field of agricultural land use. The presented study, aimed at analyzing the problems arising in this area and developing proposals for their solution, is important for the development of the science of agrarian and land law. With all the variety of studies carried out in modern legal literature, there are very few scientific works containing a comprehensive intersectoral theoretical analysis of the features of legal regulation of public administration of unclaimed shares in common ownership of a land plot from agricultural land, which determines the relevance of this study.

## 2 Research methods

In the process of the conducted scientific research, along with the general scientific dialectical method of cognition, logical methods of system analysis, synthesis, comparison, analogy were applied, as well as special legal methods of scientific theoretical research (historical, statistical, systemic interpretation, forecasting) were used.

Throughout the modern agrarian reform from the beginning of the 90s of the last twentieth century to the present, the basis of the task of state management of agricultural land is manifested in the legislative provision of its transfer to an effective landowner

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capable of rational use of land resources aimed at ensuring food security of the state, development of rural territories, employment of the rural population and a number of other socially significant tasks [1]. The results of state regulation of the use of land resources in agricultural production over the past 30 years can be characterized from extremely negative, which led domestic agriculture to almost complete ruin [2], to highly efficient, which guaranteed the country with food security.

According to state statistics, the area of unused agricultural land for the period from 2010 to 2019 in the Russian Federation increased by 16.8 million hectares. The most significant increase in the area of unused arable land is noted in the Volga Federal District, it increased by 5421.2 thousand hectares. Even in the Southern Federal District, with the most fertile agricultural lands and favorable climatic conditions, an increase in unused arable land was noted (Table 1).

**Table 1.** Increase in the area of unused arable land from the composition of agricultural land for the period from 2010 to 2019 in the federal districts of the Russian Federation.

Federal districts	Percentage of increase in the area of unused arable land in the federal districts of the Russian Federation	
	thousand ha	percent
Central	4930,6	20,2
Northwestern	1295,0	44,5
Volga	5421,2	15,6
Southern	1295,0	10,5
Ural	1338,7	17,1
Siberian	76,2	17,5
Far Eastern	423,4	16,4

The economic sanctions imposed on Russia by the United States of America together with the EU countries turned out to be, against the will of their initiators, an effective stimulus for the development of domestic agriculture. For a relatively short period of time, Russian agrarians have demonstrated high rates of development of their own production. In terms of growth rates, agriculture has become a leader in the sectors of the national economy. The volume of production of domestic agricultural products is guaranteed to ensure national food security. In the prevailing conditions favorable for the development of production, an economic need arose to expand the area of agricultural land. One of such unused reserves, which may be of significant economic interest for agricultural producers, is unclaimed land shares. This type of expansion of agricultural land areas in order to involve them in economic circulation is, in essence, a kind of forced withdrawal of unused land plots from their owners, who, for reasons provided by law, did not dispose of their rights to land. The legal nature of the transfer of rights to unclaimed land shares is inherent at the same time signs of both public and private law [3]. It should be noted that the form of compulsory seizure of land plots from their owners in order to solve public needs of different nature (construction or modernization of existing transport communications, expansion of the boundaries of settlements, development of mineral deposits, placement of real estate, etc.) is present in the legislation of the absolute most countries in the world [4]. However, the phenomenon of the concept of unclaimed land shares is inherent only in Russian land legislation.

The substantive differences between Russian and foreign legislation regarding the concept of public needs in the seizure of land plots are also quite significant [5]. For example, in the US legislation, a legal basis for the seizure of land plots in the private interests of the applicant [7] has been developed and formed by judicial practice [6], if the specified private interest as a result of its decision will lead to the realization of public interests, for example, in the creation of new jobs and an increase newly built real estate

objects [8]. Well-known Russian scientists of land law have characterized this legislative approach by the principle of proportionality of public and private interests in the seizure of land plots. In the land legislation of the Russian Federation, the justification for the withdrawal of land plots should be of exclusively public interest. In foreign land legislation, in contrast to Russian, the grounds for the seizure of land plots for agricultural purposes are more typical [9]. In Russian practice, the withdrawal of land plots, as a rule, occurs from agricultural land for industrial and other purposes.

In the process of seizure of land plots, disputes often arise about the value of the seized land property. A number of researchers [10] of the science of land law suggest, in order to increase the objectivity of resolving a specific category of land disputes [11], including those related to unequal compensation for the cost of seized land property [12], to introduce land courts into the structure of the Russian judicial system, since this category of disputes presupposes the presence of knowledge in other branches of science [13].

It should be noted that the concept of unclaimed land share is present only in Russian legislation as a legal phenomenon of a variety of land ownership. For the first time, this concept entered the official economic turnover with the signing of the Presidential Decree of March 7, 1997 "On the implementation of the constitutional rights of citizens to land", according to which unclaimed land shares were defined as shares that are not used in any of the contractual forms of legal relations by third parties throughout for three or more years and the formal owner did not apply to the district committee of land for obtaining a certificate of ownership of the land share. In accordance with the aforementioned presidential decree, the right to use such a share was retained by the agricultural organization for 3 years. If after this period the owner of the share did not apply for a certificate and did not make a decision on the use of the land share, then it remained in use by the farm for another three years. The decree was silent about the further legal fate of unclaimed land shares. The Federal Law "On the turnover of agricultural land" № 101-FZ (hereinafter referred to as the Law on Turnover), adopted on July 22, 2002, did little to clarify the situation with the legal fate of unclaimed land shares, since problems in the interpretation and application of the relevant provisions of the Law remain to this time.

The main difficulty in regulating relations, the subject of which is unclaimed land shares, is the establishment of the moment of the beginning of "non-disposal" of the land share by its owner. The officially recorded date of the last expression of will, confirmed by duly executed documents, after which no other order was followed confirming another legal fact. For example, the conclusion of a sale and purchase transaction or other transfer of rights to a land share is of significant practical importance, since it is from this that the calculation of the three-year period of its non-use begins. Most land equity holders disposed of their land property almost immediately after it was granted ownership in the course of the privatization of agricultural land. The second wave of disposal of land shares was due to the emergence of a new legal mechanism for carrying out transactions with them, enshrined in the Law on Turnover of July 24, 2002.

According to paragraph 5 of Article 13 of the Law (as amended until July 1, 2011), land shares, the owners of which did not dispose of them for three or more years from the moment of acquiring the rights to a land share (unclaimed land shares), were subject to allocation in a land plot, which, first of all, included unused land plots of inferior quality with their assessment at the cadastral value. The formation of this land plot was carried out on the basis of the relevant decision of the subject of the Russian Federation or in cases established by the law of the subject of the Russian Federation, on the basis of the decision of the municipal formation. The general meeting of participants in shared ownership has the right to decide on the location of a part of the land plot in shared ownership, the area of which is equal to the sum of the area of unclaimed land shares.

It should be noted that from the point of view of the broad interpretation of the concept of "unclaimed land shares" laid down in the Law on Land Turnover, they should include the shares of all participants in common property who have not disposed of their rights to a land share for three or more years from the moment of acquiring the rights to share. The law does not regulate situations when the owners of land shares since the entry into force of the Law on Turnover (2003) took any actions to allocate their land shares, but did not complete the registration in the required volume of their rights.

On July 1, 2011, a new article 12.1 came into force, dedicated to unclaimed land shares (introduced into the Law on Land Turnover by Federal Law No. 435-FZ of December 29, 2010), where significant changes were made to the regulation of this procedure.

It should be noted that the concept of unclaimed land share has changed again. Now, a land share belonging to a citizen who has not leased this land share or otherwise disposed of it for three or more years in a row can be recognized as such.

The norm of clause 2 of Art. 12.1 that an unclaimed land share can also be recognized as a land share, information about the owner of which is not contained in the decisions of local self-government bodies adopted prior to the entry into force of the Federal Law of July 13, 2015 № 218-FZ "On state registration of real estate" privatization of agricultural land. Here it is not at all clear what the speech is about, what kind of land share, where did it come from, if it was not provided to anyone by the decision of local self-government bodies? No less controversial is the rule on referring to unclaimed shares of those land shares that fall under the concept of escheat property, i.e. land shares, the owners of which have died and there are no heirs both by law and by will, or none of the heirs has the right to inherit, or all heirs are removed from inheritance, or none of the heirs has accepted the inheritance, or all the heirs have abandoned the inheritance and none of them indicated that they were refusing in favor of another heir.

It is necessary to emphasize the fact that, according to the previous version of the Law on Land Turnover, the allocation of unclaimed shares in a land plot was required, and the right of ownership of a public entity was recognized specifically to the land plot. Now Art. 12.1 of the Law allows for the recognition of the right of municipal ownership (the ownership of the subject of the Russian Federation is no longer mentioned in the Law) not to a land plot, but to land shares.

The regulation on the transfer of unclaimed land shares to municipal ownership is obviously formulated by analogy with Art. 226 of the Civil Code of the Russian Federation, where it is provided, the ownerless real estate is recognized in court as municipal property. The legislator instructs local authorities to determine the legal fate of unclaimed land shares, which, according to the provisions of the Law on Turnover, are obliged to prepare lists of owners of unclaimed land shares and the shares themselves and place prepared lists that meet the criteria specified in the Law on their official website on the Internet, and also on information boards located on the territory of this municipality three months before the convening of the general meeting, where these lists are subject to approval. The main role in informing the population about the holding of the general meeting is played by information boards, since many owners of land shares often do not subscribe to newspapers, and even more so do not have access to the Internet.

It should be noted that if, within four months from the date of publication of the list of owners of unclaimed shares, the general meeting did not make a decision to approve the lists drawn up, the local government body has the right to approve them independently. After the approval of the lists, the local government has the right to apply to the court with a request to transfer unclaimed land shares into municipal ownership (clause 8 of Article 12.1 of the Law on Turnover), that is, in fact, the legislator returns in this way to public ownership the land shares transferred to the early 90s in the private ownership of citizens in the implementation of land reform.

The legislator, having determined by the Law on Turnover the procedure for transferring unclaimed land shares into municipal ownership, significantly limits the possibility of preserving their use for their intended purpose in the real sector of the agro-industrial complex, since agricultural organizations and peasant farms that actually carry out their production activities may, with a high degree of probability, not recognize on the possibility of using their preemptive right to purchase the allocated land plot. The Law on Turnover does not oblige local governments to properly inform agricultural organizations and peasant farms about the fact of the allocation of a land plot against unclaimed land shares, the right to which was transferred by a court decision to the municipality.

If, within six months from the date of state registration of ownership of the municipality to the allocated land plot, agricultural organizations and peasant (farmer) households do not apply for the acquisition of such a land plot, then they lose the opportunity to redeem it without holding an auction at a fixed price not exceeding 15 percent of its cadastral value.

It should be pointed out that this legislative norm is not perfect. The legislative gap in this normative establishment (clause 5.1. Article 10 of the Law on Turnover) is that it does not provide for a situation in which several applications can be submitted simultaneously for an allocated land plot: both from agricultural organizations and from farms. It can be assumed that it will be necessary to organize tenders, the specifics of the procedure for which it is allowed to be established at the regional level by the legislative assemblies of the constituent entities of the Federation. However, in order to form a uniform practice, it would be more correct to make additions to the norm of clause 5.1, article 10 of the Federal Law on Turnover.

On the further disposal of the allotted land plot against the unclaimed land shares transferred into municipal ownership, the Law does not contain clear regulation. In particular, there is no direct indication of the Law on the enrollment of such land plots to the regional land redistribution fund, although, in fact, law enforcement practice in most municipalities is formed mainly as follows: local governments initiate the procedure for changing the designated purpose of the allocated land plot from the composition of agricultural land in the lands of settlements, followed, as a rule, by the sale of a plot for cottage development.

### **3 Results**

In connection with the above, we consider it expedient to supplement Article 12.1 of the Law on Turnover with a provision on obliging local governments to send agricultural organizations and peasant (farmer) farms to the legal addresses of agricultural organizations that actually carry out production activities within the boundaries of the common parcel of land, from which unclaimed land will be allocated. share registered letters with a notification containing a proposal for the acquisition of land plots formed at the expense of unclaimed land and transferred to municipal ownership by a court decision in accordance with Article 12 of the Law on Turnover. We also consider it advisable to provide in the special norm of Article 12.1 an addition on the transfer of a land plot allocated at the expense of unclaimed land shares, the acquisition of which was refused (equally did not show the will to acquire them) agricultural organizations and peasant farms to the regional land redistribution fund in accordance with Article 80 of the Land Code of the Russian Federation.

## 4 Conclusion

The proposed option will optimize the process of transferring unclaimed land shares to real agricultural producers. At the same time, the function of strengthening public administration in the field of agricultural land use should be expressed in the proper planning of a balanced structure of sown areas, based on the needs of not only the domestic, but also the world economy in raw materials for food and industrial purposes. It should be pointed out that it is necessary to exclude, when expanding the cultivated area, the risks of developing any manifestations of negative processes of water and wind erosion of soil, similar to the sad experience of the development of virgin and fallow lands in the USSR in the 60s of the last twentieth century, when the grown crop exceeded the demand for grain. A similar negative experience of the development of "dust drills", which carried away thousands of tons of the most fertile part of the soil horizon, manifested itself at the end of the 19th century in the United States [14]. The above fact clearly confirms the need to preserve, even in the conditions of market relations, the presence of the institution of public administration in the regulation of land relations in the field of agricultural production to ensure the protection of the fertility of agricultural land.

In conclusion, it should be noted that one of the main goals of land legislation in regulating the state administration of the most valuable category of agricultural land should be to minimize the areas of unused unclaimed land shares in the constituent entities of the Russian Federation and to accelerate their transfer to an effective landowner for targeted use in the real agricultural sector production.

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