

Russian Constitutional Court allows enforcement of debt judgments on bankrupt's sole home

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The scope of enforcement immunity for the sole home of a debtor has been determined in a recent [Ruling*](#) of the Constitutional Court of the Russian Federation.

The Constitutional Court has considerably limited the immunity from enforcement on the sole residence of a bankrupt individual. Such immunity will not apply if a debtor is found to have abused his rights (e.g. by withdrawing assets from bankruptcy proceedings to secure their immunity by purchasing a "luxury" home).

Judicial practice is also expected to change directions, allowing creditors to sell the debtor's sole property when it can clearly be classified as "luxury". However, questions remain unresolved as to the definition of criteria for "luxury" homes and the mechanisms to protect the rights of debtors in the sale of such homes.

Enforcement immunity

Assets that enforcement proceedings cannot be made against (i.e. property with enforcement immunity) are listed in Article 446 of the Russian Civil Procedure Code.

Enforcement immunity applies notably to the residential premises of a debtor if the debtor citizen and his family members live together in these premises, and this housing is the only one suitable for permanent residence (except for mortgaged property).

Enforcement immunity also applies in bankruptcy proceedings for individuals. As a general rule, a debtor's only residential premises are excluded from the debtor's bankruptcy estate and cannot be sold to satisfy the claims of creditors.

In practice, some bankrupts have abused the enforcement immunity of their sole residence by using, for example, borrowed funds to purchase an expensive residential property on which creditors could not seek enforcement.

Constitutional Court's position

As far back as 2012, the Constitutional Court [ruled*](#) that immunity of enforcement on the sole residence of a debtor is not unconditional (i.e. if certain conditions are met, there is still a possibility of enforcement). The Constitutional Court also pointed to the need to regulate the scope of the sole residence's protection in legislation and to develop a procedure for enforcement in cases where the property clearly exceeds the reasonable needs of a person. However, the legislation was never amended.

On this basis, courts have largely sided with debtors and have not enforced debt judgments on the sole property of debtors, even when such property showed characteristics of "luxury". In 2020, the Supreme Court of the Russian Federation [refused*](#) creditors the right to forcibly replace a bankrupt citizen's only flat with a smaller one. In some cases, the courts did try to investigate how the debtor's housing could be characterised, but no clear guidelines for the selective lifting of enforcement immunity had emerged.

With its new Ruling, the Constitutional Court:

- confirmed its previous position and issued a reminder that Article 446 of the Civil Procedure Code did not constitute a ground for a total ban on seeking enforcement on the residential premises of debtors if the court considers it reasonable not to apply enforcement immunity. This includes the bankruptcy of individuals;
- emphasised that enforcing a debt judgment on a debtor's home cannot be refused solely because it is the only one. The court ordering an assessment of the market value of the property may be decisive in deciding whether to lift immunity. The ratio of the market value of the residential property to the amount of the debt must also be taken into account;
- issued a reminder that courts may refuse to apply immunity if an individual bought a home in bad faith. When

assessing the bad-faith conduct of a debtor, courts are entitled to take into account and compare, among other things, the time when the debt was awarded and the date, terms and price of the purchase of the property.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Sergey Yuryev](#), [Igor Sokolov](#), [Anastasia Entyakova](#) or your regular contact at CMS Russia.

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