



**SOME DISCUSSIONS ABOUT THE "LEGAL GAPS"
THAT NEED TO BE "FILLED" WHEN THE LAW ON
LAND 2024 REMOVES HOUSEHOLDS AS LAND USERS**

In Vietnam, legal relationships concerning land often involve household entities, such as households being the subjects of ownership and being named on certificates or documents regarding land use rights, participating in land use rights transfer transactions, inheriting or transferring land use rights, and being parties in land disputes, administrative complaints/litigations concerning land, etc.

However, households are inherently unstable entities, subject to various influencing factors such as births, marriages, divorces, deaths, disappearances, changes in household registration, etc., of the members within the household. This leads to many difficulties in establishing civil transactions with this entity. Therefore, from the Civil Code of 2015 to the Law on Land of 2024, lawmakers gradually phased out "households" as subjects for establishing civil transactions and land use rights.

Nevertheless, "households" remain a historical existence, still a subject in transactions, recorded on land use rights certificates before the aforementioned legal documents took effect. This leads to the fact that there are still many lingering issues related to "households" as land use right subjects that have not been thoroughly resolved. In this specialization, ATA will present and analyze the practical issues when the Law on Land eliminates the status of household entities as land use right subjects, and thereby propose and recommend some related content to improve the legal provisions governing this matter.

1. Legal Status of Civil Subject and Land Use Rights of Household Entities

Both the Civil Code of 1995 and the Civil Code of 2005 stipulate that households comprise members with common assets, contributing collectively to economic activities in agriculture, forestry, fisheries, or other production and business areas as regulated by law. In the spirit of these two Codes, households are subjects when participating in civil relationships in these fields. The Law on Land of 2013 and prior versions also acknowledge households as land use right subjects.

According to the Law on Land of 2013, households using land are those who have marital, blood, or nurturing relationships as regulated by marriage and family laws, living together, and have the right to use land collectively at the time of land allocation, land leasing, land use rights recognition, or land use rights transfer.

Considering the above provisions, households using land include individuals who meet the following criteria:

- They must be a specific group of individuals clearly identified.
- These individuals must have marital, blood, or nurturing relationships as regulated by marriage and family laws.
- These individuals must be living together and have the right to use land collectively at the time of land allocation, land leasing, land use rights recognition, or land use rights transfer.

The recent Law on Land of 2024 stipulates towards no longer recognizing the land use rights status of household entities but only recognizes the land use rights status of household entities for cases where land has been allocated before the effective date of the Law on Land of 2024. This regulatory direction is in line with the spirit of the Civil Code of 2015, which no longer recognizes households as subjects of civil transactions. However, there are still many issues raised regarding this subject as a historical existence, the past of which has not been fully resolved.

2. Common Property and Joint Land Use Rights of Household Entities

The Civil Code of 2015 does not recognize households as subjects of civil transactions; therefore, there is no longer the concept of common property of household entities, but instead, it is "common property of household members." Accordingly, the property of household members living together includes property contributed by members collectively and other property established ownership rights according to the provisions of the Civil Code and other related laws. The occupation, use, and disposition of common property of household members are carried out by agreement. In cases where the property is real estate, registered property, or the main source of family income, it requires the agreement of all adult family members with full capacity for civil acts.

According to the provisions of the Law on Land of 2013, households using land have common rights and obligations of land users (such as being granted land use rights certificates, ownership rights to residential houses and other properties attached to land, compensation when the State recovers land, fulfilling land registration procedures; completing procedures for conversion, transfer, lease, sublease, inheritance, donation of land use rights; mortgaging, contributing capital with land use rights according to the law, etc.) and individual rights of land users (such as the right to convert agricultural land use rights; the right to transfer, lease, inherit, donate, mortgage, contribute capital with land use rights, etc.). Similar to the spirit of the Civil Code of 2015, the

Law on Land of 2013 also stipulates that households wishing to dispose of real estate must have the agreement of all members.

The Law on Land of 2024 adjusts the rights of households using land to the rights of individual members within households, and households using land that have been identified according to previous regulations are engaged in legal relationships with land as a group of land users when competent state agencies allocate land or lease land to households to implement approved compensation, assistance, resettlement plans, specific household members must be recorded in the decision to allocate land or lease land.

3. Issues Arising When Household Entities are No Longer Considered Subjects of Civil Relationships and Land Use Rights:

a. Difficulties in Determining the Status of Household Members:

Identifying household members has long been fraught with challenges:

- Firstly, Law on Lands do not provide any guidance or procedures for accurately identifying or recording information about household members at the time the state allocates land, leases land, or recognizes land use rights. In practice, parties rely on household registration books and/or land use records. This inherently leads to complications as information about household members in household registration books/land use records can change and be updated multiple times due to events such as deaths, marriages, births, household registrations, separations, etc.
- Secondly, according to the Law on Land of 2013, one of the crucial criteria for identifying household members is that they must be "living" at the time of land use rights assignment. The term "living" is an ambiguous and undefined concept in any Law on Land guidance document. Apart from household members who have long-term residency and household registration at the specific land, there are many other members who do not reside regularly but have close ties to the land (such as children working far away but still consider the land as their long-term residence) or those who no longer live there but have not "separated" or have separated but still live on the land; not to mention the Vietnamese tradition where multiple generations may live on the same land, intertwined relationships, and activities occurring with various forms, making it difficult to determine household members accurately according to legal provisions.
- Thirdly, the law also stipulates that households consist of individuals with blood, marital, and nurturing relationships. However, it must be acknowledged that, except for blood relationships that cannot be changed, marital, nurturing, and living relationships are often subject to change. In principle, when the basis for establishing rights no longer exists or changes, the rights granted will also cease to exist or must change accordingly; in this regard, when marital, nurturing, or living relationships no longer exist, terminating or changing land use rights in household relationships is necessary. However, land and civil laws have not specifically provided directions on handling these issues, thus many land disputes arise without specific resolution directions.
- Fourthly, the Civil Code of 2015 sets forth the principle of determining the rights and responsibilities regarding common property of household members based on contribution or agreement. However, the law establishes a mechanism for determining household

ownership rights as joint ownership by share, meaning each household member exploits and decides individually on their share of property, land under their ownership/usage rights. The issue arises when an agreement cannot be reached, then what basis and competent authority will determine the contribution, the portion of property/land corresponding to each member's contribution to the family?

- Fifthly, practically, due to the lack of accurate information on household members at the time of land allocation/leasing/recognition of land use rights, the process of re-determination will encounter many difficulties as relevant documents and records may have been lost, missing, or damaged over various periods. Not to mention that related individuals in the household may still be alive or deceased, some may continue to live on the land while others may have moved away but have not changed their place of permanent residence.

These unresolved complications and shortcomings, combined with the removal of "household entities using land" as subjects in the Law on Land of 2024, leave a daunting task in resolving issues related to the identification of household members using land in reality.

b. Difficulties in Determining the Rights and Responsibilities of Each Member in Household Land Use:

Clause 5 of Article 135 of the Law on Land 2024 only stipulates that "Determining the members with common land use rights of the household to be listed on the Certificate of land use rights, ownership of property attached to the land by these members' own agreement and be responsible before the law." This, in general, will make it difficult for household members and may potentially create injustices, thereby leading to disputes among household members regarding land use rights-related benefits. Moreover, since the determination of membership depends entirely on the will and agreement among the members, it may not ensure that the members meet the criteria as specified in Section 1 of this Special Topic. So, is the agreement among members at the time of establishing land use rights considered "mutual consent," or can the members or related individuals still "revoke" it to request the Court/competent authority to resolve to ensure the legality and fairness among household members? This question remains unanswered.

c. Difficulties in Issuing Land Use Rights Certificates for Household and Household Members

- For cases where households have been issued Certificates of Land Use Rights before the Law on Land 2024 came into effect, do they need to be reissued?

Currently, Certificates of Land Use Rights, ownership rights to houses, and other property attached to the land issued by the Minister of Natural Resources and Environment, as well as land use right certificates and property attached to the land of households, will list the head of the household as "Mr./Mrs. ..." or a representative who is a member of the household if the head of the household does not jointly own the land use rights of the household.

According to the provisions of the Law on Land 2024, in cases where a plot of land belongs to the land use rights of a household, a Certificate of Land Use Rights, ownership rights to property attached to the land will be issued with the full names of the members who jointly own the land use rights of the household on the certificate, and handed to the representative. If members with joint land use rights of the household have needs, a Certificate of Land Use Rights and ownership

rights to property attached to the land will be issued in the name of the household's representative on the certificate and handed to the household representative. However, the Law on Land 2024 has not clarified the following issues:

- + Do all Certificates issued under the household name before need to be reissued to include all household members? If so, how will this process be carried out, and apart from clearly stating the names of the members, is it necessary to determine their rights and responsibilities on that plot of land?
- + What future events will change the status of members and require updating information on the Certificate?
- + Disputes arising during the determination of household member status or rights and obligations of household members will be under the jurisdiction of land management agencies or the courts?

- For cases where households have established joint land use rights before the Law on Land 2024 took effect but have not been issued Certificates, how will this be resolved?

For cases where household members have established joint land use rights through events such as inheritance, gifts, or joint purchases before the Law on Land 2024 took effect, will the provisions for issuing Certificates to record member information according to the new Law apply?

4. Proposals and Recommendations to Improve the Legal Provisions Governing the Rights and Obligations of Household Land Users and Household Members Using Land

As mentioned above, the current legal provisions and regulations of the Law on Land 2024 create a new "gap" regarding the rights and obligations of household land users and household members using land. According to ATA, these "gaps" need to be "filled" with specific guidelines and clarifications in subordinate legal documents before the Law on Land 2024 officially takes effect.

Through this article, ATA proposes and recommends some contents that need to be improved and/or adjusted as follows:

- Firstly, there needs to be specific criteria to determine members within the group of land users in the form of households; this includes clearly identifying the names and identities of these members, as well as the relationships between them. Furthermore, this list of members must be documented in a legally valid manner and be referable when necessary, serving as a basis for determining the rights and obligations of the parties involved and as a basis for resolving disputes when they arise.
- Secondly, mechanisms for adjusting the list of members when new relationships emerge, change, adjust, or terminate must be established; adjustments must be timely and compatible with changes in relationships.
- Thirdly, specific guidance on the procedure and jurisdiction for determining the list of household members should be provided for cases where land use rights certificates have been issued according to previous regulations.
- Fourthly, mechanisms for resolving disputes during the process of determining the status of household members and/or the rights and obligations of household members are needed. According to ATA, land management agencies would be the most appropriate units to resolve such disputes (whether land certificates have been issued or not). However, the dispute resolution process and responsibilities of these agencies need to be clearly defined

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to expedite resolution progress, enhance the responsibilities of relevant authorities, and avoid miscarriages of justice and prolonged disputes.

The above are some analyses by ATA regarding the current legal situation, the challenges faced, and proposed directions for improving and adjusting the relevant laws and legal relationships of household land users and household members using land. We hope that the issues we have analyzed and discussed will be addressed and clarified in the guiding documents of the Law on Land 2024 to minimize challenges and disputes arising during implementation.

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- Hotline: 091.4645.112
- Email: contact@ata-legal.com
- Website: <https://ata-legal.com>
- Address: 184 Nguyen Tuan street,
Nhan Chinh ward, Thanh Xuan
district, Hanoi

ATA LEGAL SERVICES