

On the Right of Residence in the Chinese Civil Code

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Abstract

The codification of the Civil Code incorporates the right of residence into the usufruct system, and the application of the right of residence will encounter great difficulties in the temporary absence of judicial interpretation of the six articles in separate chapters, which requires a legal doctrinal interpretation of the articles based on the principles of civil law and common sense of social life in order to clarify the scope of the subject and object of the right of residence and the way of its establishment. The potential value of the right of residence in the future economic life will be explored, so that it can be further enhanced in its circulation, flexibility and adaptability based on its traditional value.

Keywords

Civil Code; Residency; Easement; Legal Catechism.

1. Development of the Right of Abode in China

The right of residence originates from the Roman legal servitude, which according to Justinian's Ladder of Jurisprudence includes three types of servitude: usufruct, use and residence.[1]The right of residence arose in Roman marital and family relations and originally existed as an institutional design for subsistence security. In Roman times, parents gave the right to live in a house by bequest to some family members who did not inherit property, so that the basic livelihood of the legatee could be secured. The study of the right of abode theory started late in China and was initially discussed in the context of marital relationship disputes. During the drafting of China's Property Law, there was a debate on whether the "right of residence" should be included.[2]Proponents argue that the right of abode should be established for the function of protecting vulnerable groups. The opponents argue that there is neither a tradition nor a widespread social need for the right of residence in East Asia, and eventually the right of residence was not included. It was only when the Civil Code was codified that the right of residence was incorporated into Chinese legislation based on the practical needs of old-age security and the function of protecting vulnerable groups, and it was explicitly stipulated in the Civil Code that the right of residence was for the purpose of "satisfying the needs of living and housing".[3]However, under China's special household registration system and land system, in order to meet the needs of the socialist market economy, the right of residence has to perform more than just this function. The interpretation of the existing provisions should be based on the national situation, so that the right of residence will "have more flexibility and adaptability" in addition to its traditional value function.[4]

2. Qualifications of the Subject of the Right of Residence

Due to the lack of direct provisions in the law, many controversies have arisen around the determination of the qualification of the subject of the right of residence, so it is necessary to make a judgment based on the interpretation and analysis of the existing articles. Article 366 of the Civil Code of the People's Republic of China, as the first content of the chapter on the right

of residence, should have an important role in the determination of the primary issue - the qualification of the subject matter - in terms of its systematic position.

2.1. The Right of Residence Is Limited to Natural Persons

The Chinese Civil Law provides for three types of civil subjects: natural persons, legal persons, and unincorporated organizations. All three are legal civil subjects in China and have civil capacity. Therefore, since Article 366 of the Civil Code only stipulates that the qualification of the subject is "right of abode", the issue of whether legal persons and unincorporated organizations can be included in the subject of the right of abode has become controversial.

Article 366 of the Civil Code also contains other provisions. First of all, this article directly stipulates the object of the right of residence--Although the definition of residence has not yet been unified in China, according to the practice and common sense of life at least it can be determined that the so-called residence is the concept of matching natural persons, legal persons, unincorporated organizations such as the proposed. The civil subjects of legal persons and unincorporated organizations are obviously not "living" this possibility. On the other hand, the purpose of the provision is "to meet the needs of life". The right to live is the exclusive right of natural persons. Only real people may have the concept of "living". Therefore, from the interpretation of the object and purpose of the right of residence in China, it can be seen that the qualification of the subject of the right of residence in China is only limited to natural persons, and does not include legal persons and unincorporated organizations. This interpretation should be said to be in line with the provisions of the Civil Code, but from the perspective of common sense in social life, the qualification of the subject is slightly inappropriate. Influenced by the household registration and land system, most of the economic subjects can only rely on leasing to meet the needs of living or business premises in the local area. Leasing often gives, the adjustment of rents at any time may cause individuals, individual entrepreneurs, enterprises address changes, bringing instability to life and business. From the perspective of individual businessmen and enterprises (legal and unincorporated persons), the right of occupancy with compensation enjoys a higher level of rights as a right in rem and has good stability, providing a lower cost and more reliable option for subjects with perpetual business purposes. However, this interpretation actually extends the object and purpose of the right of occupancy more broadly, which means that the scope of the object is extended from "residence" to "building" and the purpose of "satisfying the needs of life" is extended to "satisfying the needs of production". "The current legislative choice of setting the object as "building" is adopted in the German Civil Code.[5]

2.2. Several Types of Special Natural Persons as The Subject of The Right of Residence

The subject of the right of residence in the current legislation is still limited to natural persons, and the situation of natural persons is also very complicated. What kind of natural persons can enjoy the subject of the right of residence? There are also several aspects of the debate.

The subject of the right of residence in the current legislation is still limited to natural persons, and the situation of natural persons is also very complicated. What kind of natural persons can enjoy the qualification of the subject of the right of residence? There are also several aspects of the debate. The first question is whether home-owners, low-cost housing (renters), and high-income homeless people can be the subject of the right of occupancy? The opponents argue that the purpose of the right to housing is to address the plight of certain vulnerable groups and to protect their rights and interests.

The purpose of the right of abode legislation in China is to address the plight of specific vulnerable groups and to protect their rights and interests in life. In the opinion of the opponents, those who have a home and are entitled to low-cost housing are not disadvantaged,

so they are not recognized as tenants, and they even demand that low-cost housing tenants should be disqualified from renting after they have been granted the right to live there. This argument is wrong. As it is mentioned earlier, the right of residence recognized by Chinese legislation is not limited to the protection of vulnerable groups, but also has new connotations under Chinese special circumstances. Therefore, the protection of vulnerable groups is not the entire function of the right of residence in China's civil code, so opponents tend to generalize. The function and purpose of the right of residence in China is expressed as "meeting the needs of life", and owning (renting) a residence is certainly one of the conditions to meet the needs of life, but those who own a residence may not be able to meet the basic needs of life. As cities grow in size, commuting, educational zoning, and retirement issues are becoming more complicated. The choice of where to live often depends on the factors of education and commuting. And the right to live in a house that is settled in a school district or near office housing is also significant for those who own or rent a home. It is clear that having a home is not the same as having one's living needs met, which is a sufficient but not necessary condition rather than a sufficient condition as opponents argue.

Secondly, is it possible to create a right of residence in rural houses for people from the outside village? Rural land issues have been the focus of various conflicts erupted. There are often village rules and regulations in their own agreement such as: women married to foreign villages do not share the land (arable land, residential land) of their own village or other villages married to their own village do not share the land and so on. China's villages tend to retain the feel of a more familiar society, thanks to a longstanding household registration system that makes people less mobile. They have an innate distrust of strangers or locals who have left the village, and fear that collective property will be lost to the village, so they are conservative in land distribution. Therefore, the right of residence, as one of the usufructuary rights, has to touch this sensitive area. From the legal point of view, China's laws and policies restrict the sale and purchase of rural residential bases and houses, but the establishment of the right of residence only involves the use, not the transfer and sale of houses, so from this point of view, it can be considered that the right of residence can be established for people from other villages. However, as a long-standing local custom, the actual situation in rural areas should be fully considered in order to settle disputes.

The final question is whether the right of abode should include co-residents. The co-resident here is not necessarily a spouse, but may also be a child, partner, friend, etc., who is not necessarily related by blood or kinship but has a close relationship with the co-resident for a long time. There is also a controversy as to whether such a special status should be recognized as a right of abode. The supporters believe that after a person is given the right of residence, the right to use the house belongs to the owner of the right of residence, and he can let people who are close to him (wife, children, etc.) live together in the house according to his actual needs. However, if it is agreed in advance that the person cannot live with others, the agreement shall be honored. When the occupant loses the right of residence or dies, the person who lived in the house before will continue to use the house with the right of residence, because as a partner living together, the co-occupant actually becomes dependent, and the co-occupant is often a socially disadvantaged person, such as a widow or an orphan. They should also be protected from the original function of the right of occupancy. However, the proponents have overlooked some problems. Generally speaking, the owner of a dwelling creates a right of occupancy for the occupant based on a special relationship, but this relationship may not also involve the co-resident of the occupant, so it may go against the owner's initial intention. In addition, the right of occupancy will be extinguished only when the owner dies, and if the person living with the owner also becomes the owner of the right of occupancy, the right of occupancy will never be extinguished, which actually increases the burden of the owner, which is also contrary to the original intention of establishing the right of occupancy.

3. Scope of the Object of The Right of Residence

3.1. Identification of Residential Housing with Right of Abode

Article 366 of the Civil Code uses the expression "another person's residence", which although seemingly clear and simple, is still controversial and therefore needs to be analyzed and interpreted. The object of the right of residence in China is limited to "dwelling", but the concept of dwelling is not clearly defined in Chinese legislation. Moreover, due to the influence of China's land policy and housing policy, there are various types of dwellings: commercial dwellings, villas, apartments, subsidized housing, two limited houses (limited price and limited set), affordable houses, self-built houses on rural land, small property rights houses, internal houses of units, etc. In view of this situation, the author believes that housing should be discussed in a categorized manner.

The right of residence is a usufruct right, the act of setting the right of residence belongs to the act of disposal, the premise of this act of disposal. If there is no right to dispose or if the disposition is restricted, then it is not possible to create a residence. If there is no right of disposition or the disposition is restricted, then naturally the right of residence cannot be set and cannot be the object of the right of residence. Therefore, the right of residence can be divided by whether the owner has the right of disposal, including: full right of disposal, partial right of disposal, and no right of disposal. After this classification, the nature of several special types of dwellings can be clarified. First of all, the housing on the rural residential land is obviously a housing with restricted right of disposal, because the right to use the residential land is not transferable, so the housing on the residential land is not transferable, but it is not necessary to transfer the housing to set the right of residence, therefore, the establishment of the right of residence on the rural residential land does not contradict the current regulations. In addition, considering the purpose of the legislation, the demand for housing in rural areas is very high in order to support the elderly and raise children, so if permission is not granted, the original legislative intent of the right of residence will be greatly reduced. Secondly, small property rights houses and unit-self-built houses are houses with no right of disposal at all, but the reason why they cannot be used as residences for the right of residence is the registration problem, such houses are not included in China's real estate registration system because of the special nature of the land or historical legacy, and the right of residence needs to be registered. "residential", and the hasty inclusion will make the registration of the right of residence confusing.

3.2. Recognition of Residence of Others

The term "residence of others" seems to be easy to understand, but when the lease and the right of residence compete, a new question arises. Can the tenant create the right of residence on the leased residence? In this case, the right of residence is still set on the residence of others, but the "others" here includes a wider range of third parties (lessor), and if this problem is not clarified, it will also affect the application of the right of residence. This article supports that as long as the lessor expressly agrees, the lessees should be allowed to establish a right of occupancy on the leased dwelling. First of all, in the civil law, there is no prohibition, the autonomy of the civil subject should be given the maximum recognition. Since the parties concerned have voluntarily accepted the establishment of the right of occupancy to restrict their rights, the expression should be valid according to the principle of autonomy. From the point of view of common sense, the fundamental purpose of the lessor to rent out the house is for the income of housing rent, as long as the lessees exercises the right to use the residence within the agreed scope, it does not affect the income of the lessor. Although the establishment of the right of residence will restrict the lessor's rights, it is the lessees' rights that are more directly restricted. For this reason there is no reason to prohibit the lessees from creating a

right of occupancy on the leased dwelling, but only with the consent of the lessor. Since the similarity between lease and right of occupancy is relatively high, some of the provisions of sublease can be referred to in case the judicial interpretation is not yet in place.[6]

3.3. The Right of Residence May Be Established in The Part of The Residence

The dwelling as an object of the right of residence is expressly provided for, but whether a part of the dwelling can be separated out as an object of the right of residence is highly controversial. According to Article 377 of the Civil Code, which stipulates that the contract of the right of residence shall record the clause "the location of the dwelling", it is inferred that the dwelling in a narrow sense should only refer to the dwelling itself. However, common sense dictates that a dwelling is a space that provides the basic necessities of life, and that the size of the space does not determine the definition of a dwelling, such as a five square meter "capsule house" in Hong Kong, which can also be considered a dwelling. It is clear that one of the elements of housing is to meet specific living needs, and for multi-bedroom houses, some of the rooms also have the need to meet living needs. For such a specific part that can be used independently, it should be interpreted as a residence. According to the principle of "one property, one right", there can only be one ownership or multiple non-conflicting property rights on a property.

In China, a house requires registration to establish the right. Only a separate registered unit in the register can be considered as a thing. Therefore, although it is possible to create a right of occupancy for more than one person, the coexistence of multiple occupants is not the same as the creation of a right of occupancy for a certain part, which should be considered as quasi-community. It is also believed that the right to live in a part of a house is contrary to the object specificity of property, which is a derivative of the principle of "one thing, one right". However, Professor Fang Shaokun, who holds a different opinion, believes that "the establishment of the right to live in a part of a house does not violate the object specificity of property rights. This is because, although on the surface, the right of residence is set up on a part of the dwelling, it is actually a burden imposed on the whole dwelling, only that the scope of exercise of the right of residence must be limited to the part of the dwelling. It is only that the scope of exercise of the right of occupancy is limited to a specific part." [7] It is evident that there is a controversy, at least under the current legal framework.

The above controversy involves the issue of registration, partly arguing that the residential part cannot be registered as an object of the right of residence because it is contrary to the current registration method, including Professor Xi's view that whether it can be an object should be based on a separate registered unit. But the issue of registration is actually more of a technical issue.[8] The part of the dwelling that is the object of the right of residence must be the part that has a separate area and satisfies the living use. Parts of the kitchen, bathroom, etc. that do not have that function are excluded. Therefore, it is only necessary to accurately register in the register the part of the house where the right of residence may be created, such as bedrooms and second bedrooms, in conjunction with the construction drawings of the house, and to make notes on each separate space of the house.

In addition, from the point of view of social and economic needs, it is urgent to recognize the part of the residence as the object of the right of residence. First of all, most of the families have only one house, if a house can only have one right of residence, it actually restricts the right of residence to be rented. Moreover, for the large living space of multi-bedroom, duplex and villa, a large amount of space is wasted, so it should not be restricted too much. Secondly, in practice, homeowners often rent out one or more rooms in a house, such as partitioned rooms and group rentals. And many professional rental companies will number each room in a set of houses, and then rent them at a separate price according to the room orientation and equipment. In the rental contract, it is also stated that the tenant is renting a specific room, not a joint tenancy with multiple tenants and then allocated internally. In the form of contract provided by each

apartment rental company in Qingdao, China, it is necessary to specify not only the specific living room but also the partition room number. This is a long-standing practice in the housing rental market, which is inextricably linked to the huge demand for rental housing. Therefore, the right of residence should be set by reference. Similarly, even the German Civil Code, which strictly adheres to "object specificity", allows the establishment of the right of occupancy over the opinion or parts of a house that can be used independently, for the sake of market economy.[9]

3.4. Some of the Appurtenant Facilities Should Be Recognized as The Object of The Right of Residence

The identification of appurtenances and accessory and organic components is the first issue that needs to be resolved. For apartments, buildings and other residential plumbing, heating, kitchen, bathroom, furniture is part of the house itself or should be recognized as an accessory. But for part of the self-built housing, wells, toilets, rooms, etc. are often separate from the main body of the room, or even part of the residence including yards, storage rooms or other self-built buildings. In this case, it should not be considered as an accessory or part of the property, but should be analyzed as an accessory facility. In the case of appurtenances or parts, the occupant can use them as objects of course.

The same distinction should be made for appurtenant facilities. The article classifies the appurtenances into essential and non-essential living facilities based on the criterion of whether they seriously affect the quality of living. The above mentioned wells and toilets will obviously affect the quality of life of the occupants if they cannot use them. If the necessary appurtenances are not ipso facto the object of the right of occupancy, they will become a loophole for malicious destruction of the right of occupancy in practical application, making the right of occupancy null and void. The presence or absence of such facilities does not directly lead to a significant decrease in the quality of life, but at most increases the convenience of life. These non-essential facilities should not be considered as objects of the right of residence, but rather depend on the agreement among the parties. The use of these facilities will in fact further increase the burden of the owner and even intensify the conflict between the owner and the occupant. For example, the problem of competition for parking space and storage space has arisen. For the consideration of the principle of fairness in civil law, it is not only necessary to protect the interests of the occupants, but also to balance the interests of the owners, so it is obvious that they cannot use them. However, according to the principle of autonomy, both parties can still use the space as long as they reach an agreement.

4. Establishment and Registration of The Right of Residence

Article 367 of the Civil Code stipulates: To establish the right of residence, the parties shall conclude a contract of residence in writing. Article 371 stipulates that if the right of residence is established by will, the relevant provisions of this chapter shall apply by reference. These two articles clearly define the ways of establishing the right of residence, namely, contractual and testamentary.

4.1. Right of Residence Established by Contract in Special Cases

The contractual right of occupancy is the most conventional form of occupancy, which is not very controversial and is well established. Therefore, the focus of discussion is on the form of the contract of right of residence in special cases, for example, when the contract of sale and the contract of right of residence exist simultaneously, it can be deduced by the method of enumeration that the contract of right of residence in special cases is manifested in four forms. First, there are two possibilities for the conclusion of a contract: 1. a contract for sale and purchase followed by a contract for the right of residence; 2. a contract for the right of residence

followed by a contract for sale and purchase. In the first case, the right of residence is agreed in the contract of sale and purchase. Although the changes may occur simultaneously in the chronological order, the logical order is that the contract of sale and purchase is concluded before the contract of residence, so the contract of sale and purchase is still considered to be concluded before the contract of residence.

Table 1. Conclusion of a contract of sale before a contract of occupancy

Ownership	Home Buyers	Occupancy rights holders
A	No purchases (0)	A
		B
	B	C

In the simulation, it is assumed that the house owner is A, the case of no one purchasing the home is (0), and the case of someone purchasing the house is B. Since the house owner A, the house buyer B, and any third person C, can be potential occupants, they are represented by A, B, and C. After the enumeration two paths will appear.

Table 2. Possible scenarios for path one

Possible scenarios (path one)
A-0-A(Excluded)
A-0-B
A-0-C

Table 3. Possible scenarios for path two

Possible scenarios (path two)
A-B-A
A-B-B(Excluded)
A-B-C

In path 1, "A-0-A" means that A's house is not purchased, and then the occupant is set to A. The rest of the meanings are the same. In path 2, "A-B-A" means that A's house is sold to B, and then the occupant is created as A and so on. Many of the items listed in the enumeration method are not actually possible, but are logically possible. For example, "A-0-A" in path 1 is only a logical possibility because it is not necessary to create a right of residence for oneself since one already has ownership in practice. The "A-B-B" of path 2 is also not a real possibility, because B has already purchased the house and acquired the ownership and does not need to establish the ownership for himself. After excluding the meaningful items, several models can be abstracted from the remaining items. The "A-0-B" and "A-0-C" of path 1 together actually indicate that the owner can directly enter into a contract of residence with any person, i.e., path 1: the owner directly creates a contract of residence with the owner of residence. Path 2, "A-B-A," indicates that the owner enters into a contract of sale with the buyer and then agrees to create a contract of occupancy for himself, i.e., mode 2: the owner enters into a contract of sale with the occupant and a contract of occupancy. Path 2, "A-B-C", represents the third model: the owner sells the house to the buyer and creates a right of occupancy for a third party. In summary, three models are abstracted under the first major category.

Table 4. Conclusion of the right of occupancy first before the conclusion of the contract of sale

Ownership	Occupancy rights holders	Home Buyers
A	A	No purchases (0)
	B	
	C	B

Table 5. Possible scenarios for path three

Possible scenarios (path four)
A-A-B(Excluded)
A-B-B(Excluded)
A-C-B

Table 6. Possible scenarios for path four

Possible scenarios (path three)
A-A-0(Excluded)
A-B-0
A-C-0

According to the table, the "A-A-0" of path 3 has no practical significance, and the other "A-B-0" and "A-C-0" of path 3 have no practical significance. "A-C-0" are back to the case of "the owner creates a contract of residence directly with the owner of the residence". However, in the fourth path after eliminating the meaningless items, "A-C-B" means that the owner creates the right of residence for a third party and then sells the residence to B. That is, the owner creates the right of residence to a third party and transfers the ownership to the buyer in the fourth mode.

In summary, according to the method of enumeration, there are four modes of contracting for the right of occupancy: 1. the owner creates a contract for the right of occupancy directly with the owner; 2. the owner enters into a contract of sale and purchase with the buyer for the right of occupancy; 3. the owner sells the house to the buyer and creates the right of occupancy for a third party; 4. the owner creates the right of occupancy for a third party and transfers the ownership to the buyer.

4.2. Right of Residence Established by Will

The first thing that should be clarified when establishing the right of residence by will is the nature of the will. In the inheritance law, whether it is a testamentary succession or a bequest, the testator's estate is the target, and the right of residence established by the testator for others does not belong to the scope of the estate, so it does not give rise to a testamentary succession or a bequest, but is only a way to establish the right of residence.

It is also necessary to discuss the contents of a will for the establishment of a right of residence, or the circumstances under which a right of residence can be deemed to be established in a will. In practice, conflicts between several parties often arise because the contents of the will are "contrary to common sense". For example, the testator does not leave the estate to his family (spouse, children) in the will, but gives it to some outsiders who seem to be unrelated or living together. In judicial practice, such cases are occasionally found to be invalid under the principle of "contrary to public order and morality", but it ignores the complexity of personal life, including the relationship between husband and wife, which is "in bed with each other", and the relationship between flesh and blood, which is not necessary. However, this overlooks the complexity of personal life, including the relationship between husband and wife, which is "in bed together", and the relationship between parent and child, which is "flesh and blood". Therefore, discussing several possible forms of establishing the right of residence in a will will help the public to understand and have less misunderstanding about some seemingly "counter-intuitive" wills, which can be a good way to eliminate future litigation pitfalls.

Table 7. Several situations in which a will creates a right of residence

Owner's death	Change of home ownership	Acquisition by heirs	The occupant is an outsider
			The occupant is another successor
		Acquisition by non-heirs (outsiders)	The occupant is another outsider
			The occupant is a successor

An implicit prerequisite for the testator to create the right of residence by will is the owner of the residence. The change of ownership occurs after the death of the testator, when the change of ownership of the house occurs first. In two directions, one is acquired by the heirs, where the heirs are those who are related to the owner by blood or all the heirs in line of succession as provided by law. One is an outsider, i.e. all the people other than the legal heirs in line of succession.

It is assumed that when the house is acquired by the heirs, there are two more directions for the vesting of the right of occupancy. One is that the right of occupancy is vested in an outsider who is not an heir, such as in the case of a domestic helper who takes care of the house all year round and has no place to live after the death of the old owner. The second is that the right of residence is vested in another heir, which is often the case when a divorced family settles on the weaker party.

Assuming that the ownership of the house is bequeathed to an outsider, there are still two possible directions for the right of residence. One is to another outsider, and the other is to one of the heirs. These two situations are not common, but difficult cases often arise in rare circumstances. In particular, the first case is already rare if the ownership of the house is given to an outsider when there are other legal heirs (or relatives), and it may be more difficult for the public to understand the creation of a right of residence for another outsider. However, such a possibility does exist in the form of a possible establishment of a will, and the will of the testator should be respected as long as the relevant laws of inheritance are observed. It is not possible to make a blanket ruling that the situation is contrary to public order and morality because it is rare.

4.3. The Creation of The Right of Residence by Will Does Not Require Registration as A Condition for Its Creation

The creation of a right of residence by contract is expressly provided for in Article 368 of the Civil Code and is not in dispute. However, there is still room for discussion on whether the establishment of the right of residence by will requires registration. There are three causes of change of property rights: legal acts, factual acts and events, and administrative acts and rulings. Both the registration effective doctrine and the registration adversarial doctrine apply to the change of property rights arising from the civil legal acts of both parties. Although the making of a will is a civil legal act, the validity of a will is conditional on the death of the testator, and death is an event. Therefore, if the right of residence is established by means of a will, it is not subject to registration as a condition of establishment. Article 230 of the Civil Code can be applied by reference: If the right in rem is acquired by inheritance, it takes effect from the beginning of the inheritance. However, additional registration should be made in case of future disposition of the house.

5. The Value of The Right of Residence

The value of the right is to protect the public interest and facilitate the public's life. The origin of the right of residence shows that its original value (the value of living) is the design of the system of life security. Since the ownership of land under the socialist market economy system is vested in the state, it relies more on usufruct rights to play the role of redistribution of land resources in the transfer and use of land. Therefore, in China's special national situation, the right to housing has the role and value of promoting the redistribution of land resources in addition to the livelihood security of the disadvantaged. According to the distinction between these two values, there are two types of housing rights: living housing rights and investment housing rights. The emergence of the right of subsistence residence can, to a certain extent, alleviate the pressure of issues such as retirement and protection of special family members in the future. The high price of housing in the past two decades has fixed the assets of the majority

of households, i.e., housing has become the core of household assets. Therefore, the problem of realizing real estate such as housing is a problem that must be solved for future retirement. There have been various kinds of "retirement in housing", such as commercial insurance rebates after funding with housing and leasing after selling. However, in practice, due to the weakness of claims, the elderly often lack a strong way to protect their "right to live" after surrendering their house ownership. Now, with the explicit provisions of the right of residence, the real meaning of "old-age housing", i.e., the sale of ownership for cash, retaining the right to live in the model will soon become a reality.[10] As per capita life expectancy increases, the number of widowhood renewals among the elderly increases, along with the number of conflicts between children and the elderly. Most conflicts focus on the new family member's influence on the future division of the estate. In order to provide future security for the remarried partner, the elderly often register part of their property or house in the partner's name. However, children are often disgruntled by the expected reduction of their inheritance. The emergence of the right of residence can provide a new solution, i.e., the parties create a right of residence for the remarried partner until the partner's death, while transferring the ownership of the house to the children to achieve a balance between the two. Similarly, in the case of an elderly person who divides his or her family from his or her children or contributes to the purchase of a home for the children, the right of occupancy can be agreed upon to prevent the future plight of the elderly with no place to live.[11]

In fact the investment right of residence is a commercialization of the right of residence. Although China's usufruct rights are not restricted to real estate, all usufruct rights currently revolve around land (real estate) according to the principle of the law of property. The usufruct rights around land actually play a role of redistribution of land resources. As an allocation method, the most efficient way is to allocate them according to supply and demand in the market. In other words, commercialization is the most effective way to bring the value of the right of residence into play, therefore, the proviso of articles 368 and 369 of the Civil Code is essentially an opening for commercialization in order to better bring the value of the right of residence into play. For example, if two parties cooperate to build a house and contribute "land" and "money" respectively, when the cooperation fails and the contract is revoked or invalidated, the party who contributed the money can only claim the return of the principal and interest, which is different from the one who contributed the "land". This is unfair when compared to the "land" party who gets the existing building. It would be more equitable if the party who paid the money could obtain the right to live in part of the house based on the right to live. For example, according to the policy restrictions, some areas are not allowed to purchase a house due to household registration, and renting a house is subject to both the 20-year time limit and the fluctuation of rents, and even if we are awarded liquidated damages, it is still insignificant for a company to move or a person to move. Therefore, agreeing on a long-term right of occupancy is most suitable for the user. It is worth noting that living and investment residence are not mutually-exclusive, but the application of residence right in different fields in different value orientations. It is not valid to argue that co-existence of residence and investment residence will cause confusion.[12]

6. Summary

The study of the right of abode is still emerging in Chinese jurisprudence, and the application of the right of abode in China has great potential from the present perspective. The right of abode can be a fulcrum for relieving the pressure of old age, which provides ideas for solving the housing problems of disadvantaged groups, and provides new ideas for the division of divorced property. Most importantly, it has the potential to provide a new way of transferring land (housing) resources, i.e., to provide more stable and reliable productive living space for

the demand side without changing the premise of ownership. The legal doctrinal interpretation of the existing provisions on the right of residence should also pay attention to exploring the potential value of the right of residence and giving it more flexibility and adaptability.

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