

Potential Problems and Countermeasures for The Application of Residential Rights Law

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Abstract

Residential legislation has expanded my country's use of beneficial rights to build buildings to enrich the types of benefit rights for real estate in my country. The right of residence can allocate the ownership of the house and the right to use the right to meet the different needs of the civil subject. However, there are legal issues that have the definition of the main body qualification definition, the limitation of the object of the object, and the establishment of a residence right to set up the right to residential rights. In order to give full play to the function of the living rights system, the existence of the living right system needs to be solved. By expanding the scope of the main object of residential rights, expand the space for the applicable living right system; draw on the stipulation of residential rights in the draft of the property law in my country, and supplement the regulations for the elimination of residential rights to supplement the lack of applications of residence rights; The differences in clearing the right to the residence of the will of the will, referring to the specific terms of the applicable residence right chapter, and realize the coordination of the right to residents in the property rights and inheritance.

Keywords

Residential rights; Residence rights; Will of the right to live in the will.

1. Introduction

1.1. Positioning and function

The significance of the policy significance of the "Explanation of the People's Republic of China (Draft)" to clearly increase the residence right is "to accelerate the establishment of a housing system with multiple main supply and multi-channel guarantee." On the basis of the national Civil Code of the Law Department, my country's legislature has added a new type of residential right to use the benefit rights to achieve the guarantee of the people's "residence and living". The establishment of the right to residence meets the dual demand of people's residence and investment, and reflects the respect of private property. "It is not only the result of the economic exercise and realization of ownership of the owner of the house, but also provides the non-owners with a stable person through legal behavior. The possibility of using property".

1.2. Legislative status quo

There are 6 chapters of "residence right" in the "Civil Code", which basically follows the legislative idea of "getting mourning": Article 366 clarifies the definition and content of the right to residence, and Article 367 and 371, respectively It stipulates the situation of establishing residence rights by contract and a will, and Article 368 clarifies the principle of residential rights for free establishment and registration effectiveness. Article 369 stipulates the transfer of residence rights. situation. Obviously, the Civil Code only outlines the prototype of the right to residence. Its establishment method is too single, the scope of the main body is not clear, the

object needs to be refined and the method of eliminating is rich. The details of the categories need to be clarified by interpretation. It can be seen from the legislative context of the residence rights that it can be seen that even for a new right that needs to be detailed, the provisions of the Civil Code are limited. Planning to leave space.

2. Potential Issues Applied to The Law of Residential Rights in My Country

2.1. The definition of the qualification of the main body of the residence

The specific scope of the right to residential rights has controversial problems in the compilation of the Civil Code. Professor Wang Liming believes that the right of residence is the right to set up for a specific natural person based on the needs of life. It can only be enjoyed by natural people, and cannot be enjoyed by legal persons or other organizations. Professor Shen Satellite believes that from a literary point of view, Article 366 and below of the Civil Code do not deny the subject of non-natural person. In particular, the provisions of Article 367, paragraph 2 of the content of the residential rights contract, have clearly included "the name or name of the parties" in the first paragraph, which can undoubtedly accommodate non-natural person subjects. Secondly, the rights of civil subjects are equal. Since natural persons are residents, they must not deny non-natural person subjects without sufficient legitimate reasons. In this regard, Professor Fang Shaokun believes that only natural people have "the need for living and living", and only natural talents have the so-called "houses". Moreover, according to the former's point of view, even if the legal person and illegal organizations as residents, those who actually exercise their rights are also the right to exercise their rights. Natural persons have more confirmed that the main body of the residential person cannot be a legal person or an illegal organization. There are also opposition to opinions that only natural people will die and inherit, so there are expressions such as "no inheritance" and "death when death" appear. In fact organize.

2.2. Limitation of the scope of the object of residence

Article 366 of my country's "Civil Code" stipulates the object of residential rights as "the house of others". How can we understand this?

First of all, from the discrimination, "the house of others" can be understood as the owner of the residential owner is not the owner of the house. The purpose of the house is to meet the needs of living and life. Some scholars believe that the objects of living rights are the "houses" of others, not "houses" or "buildings", etc., mainly to meet the position and function of the purpose and function of "satisfying the needs of living and living" in accordance with In a certain sense, it exclude the applicable space for shops or buildings such as shops, factories, office buildings and other buildings. In response to this kind of view, Professor Fang Shaokun put forward different views: the original intention of the establishment of the right to residence is to meet the living needs of the right holder. In the right, the meaning of residential, buildings, and houses is the same and can be universal. The author supports the latter's point of view, because whether it is a house, or a house, as long as it can provide a living place for natural persons, it can become the object of residence.

Secondly, "the house of others" refers to all the houses of others or a house with the right to use? Some scholars proposed,

The establishment of the right of residence should be the owner of the house, and the non-owners cannot set up the right to residential. If the house is shared by multiple natural persons, the co-owner shall establish the right to residential. Professor Wang Liming also explained the definition of the right to residence in the book "The Law of the Property Rights". The right to residentiality refers to the rights and use of the residential owner to all the housing of others and other attachment.

In the provisions of Article 323 of the Civil Code, it is clearly stated that the rights owner has the right to possess, use and benefit "all the real estate or real estate of others" in accordance with the law. And in the provisions of Article 344 on the right to use the construction land, the object of construction land use rights as "all the land of the country" is expressed. This is because my country implements the public ownership of the land, and the country is the owner of the land. Regardless of whether the right to use the land or the right to use land, it is the right holder to set up benefit rights for others on the land where it has the right to use. So does this mean that the object of residential rights is not limited to all houses of others, but also a house with the right to use the right to use? Does it mean that the right of residence can be established on public rental housing?

2.3. How to set up the right to settle in the will of the will "reference to applicable"

Article 371 of the Civil Code stipulates that "if the right to settle in a will, refer to the relevant provisions of this chapter." So what are the provisions of this chapter for reference? For example, Article 368 of this chapter stipulates that "the right to residential is established from registration", then when will the formal right to set up a will? What impact does the property editors, inheritance editors and the provisions of the marriage and family editors have the impact of the benefits of the testor, heirs, or premises, and the presence?

According to the provisions of the inheritance of the Code, there are six forms of the will: self-book will, book will, notarized wills, printed wills, recording and videos, and oral wills. The first five forms can meet the written forms specified in Article 367 of the Civil Code, but the oral will does not belong to the scope of writing. So whether the oral will to establish a residential right has aroused widespread controversy in the academic community. Therefore, the author believes that the establishment of the "reference to applicable" to the way to set up the right to residential is too vague, which will lead to controversy in practice. It is necessary to further explain relevant laws and regulations.

2.4. The reason for the elimination of residence needs to be expanded

Article 188 of the "Property Law (Draft)" in 2005 has enumerated the reasons for the elimination of the rights of residence: (1) the residential person to abandon the right of residence; (2) the expiration of the residence right; (3) Conditional achievements; (4) residential rights are revoked; (5) housing is requisitioned; (6) housing lost. However, the "Civil Code" only stipulates two reasons for the elimination of residential rights in Article 370: one is the expiration of the duration of the residence; the other is the death of the residential owner. These two situations are obviously not enough to meet the actual needs of the application of residence. Theoretically, there are a variety of reasons for the use of beneficial rights rights. Professor Qian Xingxing believes that the reasons for the elimination of residential rights are: (1) the loss of houses; One person; (3) eliminates the exemption of 20 years; (4) abandonment; abuse of residential rights, such as improper use of the house where the houses live; I agree with this.

3. Improve the Problem of Countermeasures for The Application of The Law of Residential Rights

3.1. Legal personnel and illegal organizations can also become the main body of residential rights

Professor Wang Yongqi used interests to measure theory to analyze the subject of residence rights. He believes that the residential rights system mainly reflects the conflict of personal interests and Hengping and the conflict between the personal interests and the public interest.

In terms of the main body of the residential system, the formation should be strictly limited to two different views: the main body of the natural person's residence and the expansion to the legal person (or illegal organization) subject. Among them, scholars who support residential rights are strictly limited to natural persons believe that from the origin of residential rights to enter the road test, residential rights have the attributes of human service and have both personal attachment. right. The residential rights system reflected in my country can be described as the regulations of the legislature Hengping's existing housing security system, the aging society, and the high divorce rate. The legislature system is designed to solve the problem of the housing of the spouse when the residential rights system is set to solve the housing problem of pension, divorce or widowed. The scholars who support the expansion of the residential body to the legal person believe that the balance of legislation should be appropriately tilted to the non -natural person, not too much emphasis on human service and the design of the living right system should not only be limited to life and living, but to expand their horizons to satisfy satisfaction The demand for diversified financing channels of rights is to highlight the property value and investment, and benefits of the right to residence, and to emphasize the "usefulness" of residence rights.

The measures that the above two claims are measured, which are constructed on the so -called "protection of vulnerable groups" and "meeting the needs of diversified investment", respectively, and hold one end in accordance with the above purpose. In other words, the former emphasized that the main body of residential rights in my country cannot be separated from the category of natural people. On the other hand, the original intention of the state legislation is contrary to the will of the public interest. The traditional cognition of the living rights system believes that although the legal person (or an illegal organization) has no natural person's living demand, it should not deny that the property income demand for residential rights should be enjoyed.

The author believes that the scope of determination of the main body of the residential rights cannot be limited to the interpretation of the meaning of the law, and it is necessary to consider many factors such as economic development trends and the status quo of social development. Under the diversified actual needs of property, excluding non -natural persons from the subject of rights obviously lacks a certain amount of forward -looking. First of all, Article 4 of the Civil Code stipulates the principle of equality, that is, the civil subject with equal rights and legal status of natural persons, legal persons, and illegal persons. Requirements.

The author believes that the right of rights of residence should include legal persons and illegal organizations. In practice, examples of legal persons or other organizations to establish residence rights are very common. Typical examples such as the unit contribute to the construction of a residential community, and then hand over the house to their own employees. And with the development of the times, the purpose of living rights is not only limited to meeting the needs of specific natural persons, but also facilitates the efficient use of resources.

3.2. Oral will also set up the right to residential

Some scholars believe that the verbal will does not meet the requirements of written forms and cannot set up the right to residential. Some scholars believe that the verbal will to establish a residential rights outside the "reference application" of Article 371, which is too rigid and dogmatic. The author supports the latter view that Article 1138 of the Civil Code stipulates that the testor can make a verbal will in the critical condition. Two witnesses should be witnessed by verbal will. On the one hand, the principle of private autonomy is the fundamental characteristic of civil law that is different from other legal departments, and it is generally defined as "the principle of individuals forming legal relations by individuals through its meaning." Civil legal behavior follows the principles of autonomy, that is, the parties participating in civil activities enjoy complete freedom within the scope permitted by the law.

According to their own freedom, determine the establishment of civil legal relationships, set the rights for themselves or assume their obligations to others. Organization and individuals must not intervene illegally. The meaning of the principle of autonomy is called the principle of free will in the inheritance law. If you do not acknowledge that oral will can set up the right to residential, it will deprive the parties' right to punish. On the other hand, if the content of the will in the form of oral will is legal and does not violate the public order and customs, it should be regarded as valid for verbal will, then at this time, it is not possible to set up a residential rights and inheritance editors in writing. Relevant regulations are contradictory.

3.3. Add three types of eliminations

In the French civil law, according to the provisions of Article 617 of the Code, the reasons for the elimination of the use of benefits are: the natural death or civilian death; After 30 years, the power of benefit is not used; The right to use the right to use in French civil law is eliminated as the same reasons for the use of benefits. In the German civil law, in accordance with the provisions of Article 1053 and other provisions, the main reasons for the elimination of benefits are: the death of the person who uses the rights of the rights; Used, the owner destroyed his power through litigation. In addition to the above reasons, the elimination of the right to residential law in German civil law also has the right to abandon rights and the loss of housing. Professor Qian Xingxing believes that the reasons for the elimination of residence rights are: (1) the loss of the house;) Abandoned; abuse of residence, such as improper use of the houses they live; (5) The legal residence rights of parents and children are eliminated by their children's adults.

4. Conclusion

Residence rights have dual attributes of human service and beneficial rights. Human service residential rights reflect the policy considerations of the weak protection and have affordable function. The residential rights of the nature of the benefit of the rights have the diversified value of private autonomy, efficiency, and protection of the weak. The Civil Code should clarify the scope of the main object of the living rights, allow non -natural persons to become the main body of residence, and in line with the institutional value of residence. Acknowledge the residence rights established by the method of verbal will, and indicate that the form of residence is established to refer to the applicable specific terms, and provide a clear guidance for the applicable law of the residence rights of the will. Expansion of the reasons for the elimination of residence to meet the diversified needs of the applicable occasions of residence rights in today's era.

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