

A Preliminary Study On The Legal System Of Residence Right Transaction

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Abstract: The residence right system in the “Civil Code” originated from Roman law. As far as the establishment function is concerned, historically emphasized the protection function of the residence right. The research on the legal issues of the residence right in the Chinese context is also related to its protection function, and even more regarding its economic functions. This article attempts to discuss the legal issues related to the right of residence transaction from the perspective of transaction, which can be used to broaden the scope of application of the right of residence system, and provide a new idea and explore a new model for the real estate transaction in practice.

1. Introduction

After publishing the “Property Law” and the promulgation of the “Civil Code”, the academic circles have conducted many discussions on the related issues of the right of residence [1-3]. Today, the legal system of the right of residence has been formally established in the “Civil Code”. From a historical perspective, the right of residence system is often limited by ethical considerations, but the establishment of a legal system is always expected to regulate certain legal acts, establish certain psychological expectations, and guide social and economic development to a certain extent. Looking at the residency system from a perspective [4]. It is even more necessary to consider diversified use of its institutional advantages and rational use of its transaction-centric economic function [5-6]. The core of the housing ownership transaction model is based on the use of ownership [7]. As the core right in the property rights system, it is understandable that ownership can give full play to its institutional advantages [8-9]. However, its application still has an inevitable disadvantage—the consideration required for ownership disposal is higher, because the owner has all the powers to possess, use, profit, and dispose of the property [10]. However, when residents’ consumption power is insufficient, the transfer value of this nature will be restricted by objective transaction conditions, or its price may be reduced or its transaction volume may be affected [11]. As early as when the “Civil Code” was drafted, the legislature pointed out that in order to implement the requirements of the Party Central Committee, recognize and protect the flexible arrangements of civil subjects for housing security, and meet the housing needs of specific groups of people, the establishment of a housing right system, then, right. As far as market entities are concerned, they attach great importance to the “flexible arrangement” of housing security [12]. Under the background that the rising housing ownership transaction price is restricted by the insufficient consumption capacity of residents, explore the business model of housing rights that is lower than the ownership transaction price, and study housing Right transaction has practical significance.

2. The Application of the Right of Habitation Legal System

To the best of our knowledge, according to the provisions of paragraphs 3 and 4 of Article 367 of the “Civil Code”, the parties must enter into a written contract of right of residence. The contract generally includes the conditions and requirements of residence and the duration of the right of

residence. According to Article 368 of the Civil Code, the right of residence is established free of charge, unless otherwise agreed by the parties. Where the right of residence is established, it shall apply to the registration agency for registration of the right of residence. The right of residence is established at the time of registration. Based on the provisions of the aforementioned law, the law does not prohibit the paid establishment of residence rights, which means that for market entities, in addition to sales and leases, there is a new mechanism for the use of real estate rights.

3. The Subject of the Right of Residence Transaction

When the legal relationship of the right of residence transaction is established, generally speaking, there are two parties of rights, including the establishment of the right of residence and the person who enjoys the right of residence. The legal relationship of the creditor's right is established when the contract for the right of residence transaction is signed, and established since the registration of residency.

(1) Discussion on the subject of right of habitation.

It can be found that Articles 366 to 371 of the Civil Code, there is no detailed definition of the subject of the right of residence, that is, the scope of the holder of the right of residence. Thus, whether the holder of the right of residence can only be a natural person, or Can it also be legal persons and other organizations. It is necessary to interpret the existing provisions. Article 366 of the Civil Code stipulates that the right of residence is a kind of usufructuary right that meets the needs of life. Legal persons and other organizations need to operate the residence system. Therefore, From this point of view, only natural persons have specific needs in life. The author believes that the holders of the right of residence should be limited to natural persons.

(2) The right of residence is based on the co-resident of the right of residence.

The establishment of the right of residence requires a written contract. The holder of the right of residence agreed in the contract is of course the subject of the right of residence, but does the co-resident of the holder of the right of residence enjoy the right of residence because of the right of residence of the holder of residence. There is no clear stipulation in the law, and academic circles also hold different views on this. Zeng et al. found that the right of residence should be distinguished from the indirect beneficiaries of the right of residence. The holder of the right of residence is limited to the subject of the right of residence determined by the contract, and the indirect beneficiary includes the right of residence. Family members and those who provide them with medical or household services. The author agrees with the foregoing point of view. Therefore, in practice, when entering into a residency contract, attention should be paid to the determination of the owner of the residency in the contract, so as to avoid the death of the party signing the contract and the elimination of the residency. Circumstances such as children cannot continue to live, cause unnecessary disputes.

4. The Contractual Method of Residency Transaction

The object of the right of residence transaction, that is, the object pointed to by the right of residence, uses the concept of "residential" in the "Civil Code" of our country. In the usual sense, a house refers to a closed space for people's daily life and outsiders cannot enter at will. It is often agreed with houses, buildings, real estate, etc. At the same time, this is also a concept with a wide range of applications. From the perspective of residency transactions, the following issues can be discussed:

(1) Housing classification.

According to the legal nature of the house, it can be divided into commercial houses, affordable houses, resettlement houses, and villagers' self-built houses on the homestead. According to the commercial nature of the houses, it can be divided into ordinary houses, villas, apartments, and

garden houses. According to the supply of houses, the form can be divided into a single set of residences, whole-story residences, all-unit residences, all-building residences, and even all residences in the community.

(2) Housing supply form.

Regardless of the specific nature of the house, as long as it is the owner's own property house, the right of residence can be set individually or in a certain number for the owner of the right of residence. The former refers to the establishment of the right of residence for the counterparty of the contract by the owner of the specific residential property, and the latter includes Real estate developers provide a certain number of buildings or entire communities to the market in the form of residence rights; elderly care services and other institutions will develop or purchase buildings to the market with residence rights with value-added services, real estate investors and investments Institutions purchase buildings and supply them to the market with the right of residence, rural collective economic organizations develop residences or reorganize idle houses of villagers, and supply residence rights to the market segments dominated by holiday tourism groups.

(3) Multiple residency rights are established in the same residence.

Whether the right of residence can be set in a part of the house, in other words, whether the holder of the right of residence can enjoy the right of residence in part of the house is a question worth discussing.

(4) The object of the right of abode include residential ancillary facilities.

5. Contractual Method of Residency Transaction

(1) Directly enter into a residency contract.

In this case, the owner directly enters into a right of residence contract with the counterparty of the contract, and stipulates the contract subject information, the basic information of the target house, the price, the time limit, and the living conditions.

(2) The owner and the counterparty of the contract enter into a residency contract and at the same time conclude a sales contract.

In this case, the owner still signs a right of residence contract with the consumer in the aforementioned manner, but it is also necessary to conclude a separate purchase and sale contract on the premise of the right of residence contract, stipulating that the term of the right of residence expires and the original owner of the right of residence needs to purchase the house. The purchase price can be given a certain percentage discount, and the liability of both parties for breach of contract can be established to lock in risks.

(3) The owner concludes a residency contract with the counterparty of the contract, and concludes a time-limited sales contract with the investor.

In this case, the owner signs a right of residence contract with the counterparty of the contract according to the first method mentioned above, stipulating in detail the contract period and price; and signing a sales contract with the investor, agreeing with the investor that during the duration of the right of residence, Investors are given a certain amount of investment income, and the residency period expires, and investors obtain the ownership of the target house based on the transaction behavior through registration.

(4) The owner and the buyer enter into a conditional sale and purchase contract, and the attached condition is that the buyer establishes the right of residence for a third person within a certain period of time.

In this case, the owner and the buyer directly sign a conditional sale and purchase contract, which stipulates the third person's right of residence, and the buyer and the third person separately

conclude a right of residence contract to stipulate matters related to the right of residence, and the buyer Pay the house price according to a certain proportion with the holder of the right of residence.

(5) The owner and the counterparty of the contract shall enter into a right of residence contract, and the owner of the right of residence shall enter into a lease contract with a third party.

In this case, the owner directly enters into a right of residence contract with the counterparty of the contract, and stipulates the contract subject information, the basic information of the target house, the price, the time limit, and the living conditions. The villagers collectively sign an intermediary service contract with a tourism company for idle houses, and then sign a contract for the right of residence with groups in need of tourism and vacation.

(6) The villagers collectively sign a commission contract with the rural collective economic organization for the idle houses, the village collective economic organization signs an intermediary service contract with the tourism company, and then the travel and vacation demand group sign the housing right contract with the house owner.

In this case, the villagers shall regulate and organize the houses on their homesteads, sign an entrustment contract with the village collective economic organization, stipulate that the villagers' idle houses shall be managed by the village collective, and reach an agreement on the entrusted agency authority, contract period, etc.; The collective economic organization signs an intermediary service contract with a travel company, agreeing to conclude a contract for the promotion of the right of residence as a payment condition for the intermediary service fee, and authorize the travel company to act for it to find the demand group for travel and vacation, and then the demand group and the villager will sign the right of residence contract. The period of residence, the price, the rights and obligations of the parties, etc. shall be further agreed.

6. Real-world Applications of Residency Transactions

(1) Residential rights transactions for retirement purposes.

Salary groups in China have always faced greater pressure to buy houses. Parents often spend their life savings on buying married houses for their children. As for helping their children repay their loans and raise their grandchildren, it seems to be a Chinese practice. The transaction of residence rights applied to the purpose of elderly care, for the elderly with houses, can make them more flexible to use the real estate under their names, including renting and selling the original houses, and establishing new residence rights to improve their quality of life; for the elderly without houses, The right of residence can also meet their living and living needs with lower consideration and a stable state of rights.

(2) Support the transaction of housing rights for the poor.

It can be applied to the transaction of housing rights for urban employees in difficulties, which can provide low-income groups with housing options that are in line with their economic capabilities; it also helps to straighten out the complex real estate management mechanisms of affordable housing, low-rent housing, and public housing security housing in my country at this stage, simplifying real estate Relevant management systems; due to the retention of ownership, the willingness to supply housing enterprises for the development of housing rights projects can also be appropriately increased, reducing the financial pressure the government faces in the transformation of old cities.

(3) Residential rights transactions for consumption and investment.

Residential rights transactions applied to consumption and investment, on the one hand, can broaden the existing real estate transaction mode to better meet the life and consumption needs of various market entities. On the other hand, it can better demonstrate the core concept of civil law regarding the autonomy of private will, and give better play to the advantages of the property right of residence.

(4) Residential rights transactions applied to investment.

If the owner of the house does not intend to sell the house but intends to use the house to obtain a higher amount of income at one time, he can agree with the counterparty of the contract for a longer period of residence, and agree that the house with the right of residence can be leased separately at the contract price once or pay in several installments; and the holder of the right of residence can obtain the right of residence for investment purposes and rent out the house.

(5) Application in corporate financing.

The enterprise can set up the right of residence for compensation for the real property it owns, obtain the income of the set right of residence, and when there is a viable opportunity for re-speculation, remortgage the set right of residence property for financing, or use the receivable formed by setting the right of residence consideration Pledge financing of accounts receivable or factoring business financing for accounts receivable in order to give full play to the utility of financial leverage and promote corporate financing.

7. Possible Problems of Residency Transactions

Notwithstanding there exist certain advantages, the application of housing rights transactions may also cause several problems: Firstly, it brings new real estate speculation and hype. Secondly, the expiration of housing rights may bring new housing disposal problems. Thirdly, the project may have a low rate of return and risk Higher, investment and operation methods urgently need to be explored and adapted, and the market may still need a process of understanding and adapting to housing rights transactions. The fourth, the government has a higher ability to regulate and control, and have higher management capabilities and value-added service capabilities for real estate companies Requirements.

8. Conclusion

The traditional real estate transaction is limited to the dual model of “rent or sell”. The creation of the legal system of residence rights establishes a new transaction model. Its application can benefit the “vulnerable groups”, provide convenience for consumers, and Investors create new investment paths. At this stage, there are still few examples of real estate housing rights transactions. In view of this, the author has conducted a preliminary discussion on the legal system of housing rights transactions in this article, hoping to open up a new path for real estate transactions in practice.

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