

Study on the Renewal of the Right to Use Residential Construction Land

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Abstract: *The automatic renewal of the right to use residential construction land is closely related to everyone's life. It is a hot topic of widespread concern in society and a people's livelihood issue that affects the vital interests of the people. How to formulate renewal rules is crucial to social stability and the long-term stability of the country. At present, the main problems in China's automatic renewal system for the right to use residential construction land are as follows: the unclear regulations on whether the right to use residential construction land is paid, the uncertainty of the renewal period and times, and the inconsistency of the standards for paying renewal fees. This paper will start from the legislative status and operation status of the automatic renewal of the right to use residential construction land, analyze the deficiencies in the current renewal system of the right to use residential construction land, and through the display of different views of various scholars, clarify the author's propositions and opinions on the issues of whether it is paid, the renewal period and times, and the standards for paying renewal fees regarding the renewal of the right to use residential construction land.*

Keywords: *Right to Use Residential Construction Land; Automatic Renewal; Payment of Renewal Fees*

1. Introduction

When the term of the purchased right to use residential construction land expires, does it need to be renewed? How should the renewal be carried out? Is the renewal paid? If it is paid, how should the fees be paid? Such issues related to the renewal of the right to use residential construction land have always been regarded as a sharp blade hanging over the vital interests of all people. They involve the vital rights and interests of every ordinary citizen and have long been a hot issue attracting the attention of the whole society. Especially due to the high housing prices in reality, such issues have become the focus of social attention. Article 359, Paragraph 1 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) simply stipulates that "when the term of the right to use residential construction land expires, it shall be automatically renewed. The payment or reduction or exemption of renewal fees shall be handled in accordance with the provisions of laws and administrative regulations". However, this simple statement is relatively vague and does not specify the renewal time, fee payment and other relevant details. As a result, when local governments face practical problems regarding the expiration of the right to use residential construction land, there is no clear legal basis for guidance, and the solutions adopted by various regions are different. Therefore, it is indeed necessary to conduct research on the renewal of the right to use residential construction land to provide certain guidance for practical work.

2. Current Situation of Automatic Renewal of the Right to Use Residential Construction Land

2.1 Legislative Status Quo

The main laws and regulations related to the right to use construction land in China are as follows:

1) Article 40 of the "Interim Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns" clearly stipulates that when the term of the land use right expires, the state automatically and free of charge obtains the right to use the land and the ownership of the above-ground buildings and other attachments; Article 41 further stipulates that after the expiration of the land use right, the parties may apply for renewal. If renewal is indeed necessary, a new contract shall be signed in accordance with the provisions of Chapter II of these Regulations, the land transfer fee shall be paid, and the registration procedures shall also be completed.

2) Article 22 of the Urban Real Estate Administration Law of the People's Republic of China stipulates that when the term of use agreed in the land use right transfer contract expires, if one needs to continue using the land, an application shall be submitted no later than one year before the expiration. Approval for renewal shall be granted unless it is for the consideration of social and public interests. If the renewal is approved, a new contract shall be signed and the transfer fee shall be paid.

3) Article 359 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") stipulates the "automatic renewal" system, that is, laws and administrative regulations regulate the payment or reduction or exemption of renewal fees.

In fact, the three aforementioned laws and regulations have established China's legal system for the right to use construction land. Currently, most scholars in the academic community recognize the "automatic renewal" system established by the Civil Code, but there are still some disputes over this system. Article 359, Paragraph 1 of the Civil Code only provides a relatively general definition of the automatic renewal system, which is highly general. It does not clearly stipulate practical issues such as whether renewal is paid, the term and number of renewals, the standards for paying renewal fees, and the standards for reduction or exemption. Therefore, in judicial practice, when dealing with cases involving the renewal of the right to use residential construction land, due to the ambiguity of the legislative provisions, there have been diverse attitudes and viewpoints, and the government's approaches to renewal issues have been inconsistent and irregular, which has caused significant social divisions. For this reason, it is necessary to study and improve the relevant legal norms concerning the renewal of the right to use residential construction land.

2.2 Current Operation Status

In light of the current social reality, the right to use construction land for housing in some regions of China is expiring one after another, with the most typical cases being the practical operation situations in Shenzhen, Qingdao, and Wenzhou.

In the Shenzhen area, Shenzhen has adopted a model where one can apply for renewal of the term after paying land rent or making up the payment of the benchmark land price. The "Several Provisions on the Renewal of Expired Real Estate in Shenzhen" was issued by the Shenzhen Municipal Government in 2004, which states that expired houses can be renewed on a paid basis through two methods. One is to make up the payment of 35% of the benchmark land price as the land price difference. The parties shall separately sign a land grant contract and pay the relevant fees in a lump sum; otherwise, they cannot obtain the land use right certificate, and thus cannot use the obtained real estate certificate for market transactions. The second is to pay land rent in accordance with the land rent payment standards determined in the regular announcements by the municipal land and resources authorities, and the parties shall sign a land lease contract. The hourly rent does not have to be paid in a lump sum; it can be paid in annual installments. As for the renewal period, the parties can negotiate and determine it by themselves, but its scope must be within the maximum period stipulated by law minus the already used period.

In the Qingdao area, when the 20-year right to use the residential construction land of Alishan Community, located in Qingdao Economic Development Zone, expired, the Qingdao land and resources department intended to negotiate with the owners in accordance with the relevant provisions on paid renewal in Article 21 of the Urban Real Estate Administration Law. The renewal would be carried out after paying 60% of the benchmark land price based on the average land price of the previous year in the region where the land is located. However, this plan has not yet been formally introduced nor applied in practice. But it is not difficult to see that the Qingdao government has adopted a policy where an extension can be applied for after paying the average land price.

In the Wenzhou area, the practice of the Wenzhou government requiring Wenzhou citizens who wish to continue obtaining land use rights after the expiration of the term of residential construction land use rights to pay high land transfer fees has triggered an adverse demonstration effect. To address this issue, on December 8, 2016, after conducting a series of investigations, the Ministry of Land and Resources issued the "Reply on Properly Handling the Issue of Expiration of a Small Number of Residential Construction Land Use Rights" in response to the problem of renewal of expired real estate in Wenzhou, proposing a transitional method, namely the "two noes and one normal". Specifically, this method means that the parties do not need to apply for renewal, do not need to pay relevant fees, and can go through normal transactions and registration procedures. As for the "land use term", the original start date and expiration date of the residential construction land use right should be specially noted.

Through sorting out and analyzing the current operation status of the above three regions, it can be seen from the comparison that the three regions do not have a unified approach to the payment of renewal fees, and there are also differences in prices, which have caused great controversy. It is undeniable that the practices of the three regions have similarities: all three regions have affirmed the method of paid renewal. Due to the absence of legal provisions on this issue, governments of various countries have adopted different approaches to handle it. In the face of incidents caused by such problems, we can only take response measures based on other legal norms. Therefore, it is very necessary to improve the laws and regulations on the automatic renewal of the right to use residential construction land as soon as possible, so as to provide a basis for top-level design for various regions. Only in this way can we truly gain the trust of residents and ensure the stable and standardized operation of the market economy.

3. Issues in the Renewal of the Right to Use Residential Construction Land

3.1 Uncertainty about whether renewal is paid or not

There has long been significant controversy in academic circles regarding whether a certain fee needs to be paid for automatic renewal. The reason is that Article 359 of China's "Civil Code" only makes a general provision on the "automatic renewal" system and does not provide specific regulations. However, with the rapid development of the current social economy, this issue really needs to be explored to find a solution path. There is no definite answer as to whether the automatic renewal of the right to use residential construction land should be paid or free of charge. Frequent incidents in Wenzhou, Qingdao and other places show that at present, China should solve the relevant issues involving the automatic renewal of the right to use residential construction land through legal means to provide sufficient legal basis for protecting citizens' housing rights and interests. The lack of this legal provision has brought certain difficulties to social practice and also to judicial practice. Regarding this issue, the Higher People's Court of Guangdong Province, the Intermediate People's Court of Ji'an City and the Intermediate People's Court of Wenzhou City have all avoided handling it because the law does not stipulate it. For the issue of the renewal of the right to use residential construction land upon expiration, local governments and courts have different applications of the law, and their handling opinions are also very different. Therefore, it is indeed necessary to improve the automatic renewal system of the right to use residential construction land by clarifying relevant provisions, further clarify whether it is paid or free, and provide a standardized path for judicial practice.

3.2 Unclear renewal period and number of renewals

After the term of the right to use residential construction land expires, how long can it be extended? Thirty years? Seventy years? Or permanently? Can it be extended again when it expires next time, and how many times can it be extended? These questions are some unavoidable issues related to the "automatic renewal" system involved in this article. Under the current legal system, first of all, the Civil Code has not yet stipulated the renewal period and the number of renewals, and has not stipulated the "two noes and one normal" response measures issued by the State Council for a few cases where the term of the right to use residential construction land is less than 70 years. The "automatic renewal" system seems clear, accurate, error-free and undisputed in the eyes of laymen, but in the eyes of professionals with expertise, this system involves many interests. On the surface, it is not complicated, but its essence has a certain degree of ambiguity. Therefore, scholars have different views and opinions on this issue.

3.3 Unclear standards for payment of renewal fees

The current prevailing view holds that automatic paid renewal should apply, and this perspective is endorsed by many scholars. However, there is no consensus among scholars on the specific charging standards. The Civil Code does not stipulate the standards for paying renewal fees, which has led to varying standards for paying renewal fees for residential construction land use rights among local government departments[1]. For example, the Shenzhen government adopts a model where extension is possible after paying land rent or supplementing the benchmark land price; the Qingdao government implements a policy allowing extension applications after supplementing the average land price; and the Wenzhou government applies the "two noes and one normal" response measures. It is evident that clearly and uniformly stipulating the standards for paying renewal fees in law is extremely urgent for

government departments to handle and resolve such issues in practice. At present, the different opinions of various scholars on specific charging standards can provide the legislative body with diverse references and suggestions.

4. Suggestions for Improving the Automatic Renewal of the Right to Use Residential Construction Land

4.1 In principle, automatic renewal should be paid

As mentioned earlier, most scholars in the current theoretical circle agree with the theory of paid renewal, and the author also agrees that automatic renewal should be paid, for the following reasons:

From the perspective of legal interpretation, automatic renewal is not equivalent to free renewal; paid renewal is more reasonable. Firstly, in terms of its literal meaning, automatic renewal refers to the effect of obtaining an extension of the term without any external force after the term expires. This is relative to applying for renewal, emphasizing a spontaneous act that does not go through any procedures, rather than emphasizing that it is free of charge[2]. Secondly, from the legal method of systematic interpretation, the "Interim Regulations", the "Real Estate Administration Law" and the "Civil Code" have constructed a legal system for the renewal of the right to use construction land. Among them, both the "Interim Regulations" and the "Real Estate Administration Law" stipulate that renewal should be paid, while the "Civil Code" does not take a position on this issue. The "Property Rights Section of the Civil Code" stipulates that the right to use residential construction land should be automatically renewed after expiration, and further stipulates that the handling of the right to use non-residential construction land should be dealt with in accordance with the express provisions of the law, namely Article 22 of the "Real Estate Administration Law", which states that after the expiration of the party's land use right, they should apply one year in advance, re-sign the contract and pay the land transfer fee[3]. Therefore, it is believed that the theory of paid renewal is more reasonable than the theory of free renewal.

Paid renewal is compatible with China's land system. First, in terms of land property rights, the state, as the actual owner of residential construction land, has the right to dispose of the transfer and allocation of land on its own[4]. The transfer requires the parties to pay a certain fee. If the theory of free automatic renewal is applied after the expiration, it will undoubtedly damage the overall interests of the state and is inconsistent with our land system. Second, from the perspective of the parties' acquisition of land use rights, the state or collective enjoys land ownership, and individuals only enjoy real rights other than ownership. The right to use residential construction land generally requires the parties to pay a certain fee, and only allocation does not require payment. In addition, the right to use homesteads is intended to protect farmers' housing rights and interests, so no fees are required for the exercise of such rights[5]. In view of this, when renewing the right to use residential construction land after its expiration, the parties should still pay the corresponding fees.

Paid renewal plays a positive role in maintaining social fairness and stability. Due to historical reasons, in some cities such as Wenzhou and Qingdao, the service life of some housing is less than 70 years, and because the term of land transfer fees is relatively short, if all housing renewals are free of charge after the expiration, it will cause unfairness and chaos. Of course, some scholars have proposed that if the service life is less than 70 years, a certain amount of transfer fee should be paid. However, the current market economy is developing rapidly, and prices are constantly changing[6]. The specific amount that the parties should pay is still subject to high costs, which is obviously not feasible. Therefore, paid automatic renewal is more feasible.

4.2 Improve the applicable rules for renewal period and times

As demonstrated in the aforementioned research, the prevailing academic view holds that the renewal of the right to use residential construction land should adopt the theory of paid renewal. Based on this, combined with scholars' perspectives, the author believes that a relatively long renewal period should be chosen within the safe existence period of the building[7]. "Choosing a relatively long renewal period within the safe existence period of the building" includes two requirements: first, it must be within the safe existence period of the building, that is, the sustainable period of the building. This is based on the following considerations: First, from the perspective of the nature of this right, it should be identified as a usufructuary right, which is a limited real right, and the continuation of its right should have a time limit. The renewal of the right to use residential construction land should

adhere to the requirement that usufructuary rights have a time limit. Second, regarding the relevant content of China's land system, the state, as the actual owner of the construction land, has clearly stipulated the statutory transfer period in the law[8]. If automatic renewal is applied, it will damage state ownership, confuse it with land ownership, and thus lead to the phenomenon of land privatization. Third, limiting it to the sustainable period of the building is more in line with the principle of "integration of land and buildings", as well as people's living habits and concepts, and is more easily accepted by people. Fourth, limiting the renewal period to the service life of the building is conducive to public safety. Every building has a normal service life. If the service life is not limited, residents will continuously repair dangerous houses to extend their lifespan, thereby threatening public safety[9]. By taking the sustainable period of the building as the renewal period, after the house reaches its service life, the land use right can be recovered to demolish dangerous houses, thus ensuring public safety. Although the cost of identifying and evaluating dangerous houses is high, doing so is beneficial to public safety.

The second requirement contained in "choosing a longer renewal period within the safe existence period of the building" is to select a longer renewal period. A longer renewal period can effectively reduce the frequency of resolutions and is more operable in actual practice. During the renewal process, it is necessary to conduct external communication with relevant government departments, submit a renewal application, and hand over renewal materials. Therefore, during the renewal period, the green principle advocated in the Civil Code can be better implemented, avoiding resource waste caused by repeated renewals. In addition, the length of the renewal period will directly affect the stability and orderliness of transactions. After the transferee takes over the house, they may face the issue of renewing the land use right again within a very short period of time. The uncertainty regarding whether the renewal will be granted will have an adverse impact on the stable expectations of transactions and greatly affect the transaction order. Therefore, setting a longer renewal period can ensure the stability of transactions. As for the number of years for each renewal, it can follow the relevant regulations in China that the maximum term of the right to use residential construction land is 70 years, that is, the renewal period for the parties is limited to 70 years.

In conclusion, the author believes that in order to facilitate parties involved by reducing procedural hassles and ensure the stability of property transactions, the renewal period and the number of renewals should be determined based on the service life of the house. If a house can be used for more than 70 years, it can be renewed for 70 years. If its service life is less than 70 years, the maximum renewal period shall be the appraised remaining service life. Before each renewal, the house must be re-evaluated to determine whether it can be renewed. If it can be renewed for another 70 years, it will be renewed for 70 years; if its remaining service life is less than 70 years, the renewal period shall be limited to the maximum safe service life of the residence.

4.3 Clarify the charging standards for automatic renewal

Many scholars agree with the three payment methods: land grant fees, annual rental system, and converting fees into taxes[10]. However, in reality, there are no essential differences between these three payment methods. All of them provide a legal basis for house owners to continue using the land, and it is advocated that fees should be paid annually within the scope of renewable periods at one's discretion[11]. Hong Kong's in China annual rental system starts from the perspective of creditor's rights, and renewal of the lease should be based on the lease agreement between the parties; land use tax is levied in accordance with legal provisions. These three methods only differ in name, but in essence, they all involve paying renewal fees on an annual basis. Even most of the scholars who advocate renewal based on land grant fees propose annual payment. On the one hand, land use fees can be repaid in installments, which can reduce the burden on land users and improve people's acceptance. On the other hand, since the service life of houses is not fixed, if they are scrapped in advance, there may be a risk of difficulty in getting a refund for the one-time payment of renewal fees for several years. Thirdly, from the perspective of convenience. Setting the renewal period as 70 years is not contradictory to the annual payment method for renewal. A long renewal period can ensure that the land use right is not prone to changes and also guarantee the security of transactions. Meanwhile, paying annually can clarify the rights and obligations between buyers and sellers and avoid paying a large sum of money for many years at once. This will help reduce subsequent disputes arising from potential issues of refunds and supplementary payments, thereby improving transaction efficiency.

5. Conclusions

Considering that the transfer fee, annual rental system, and converting fees into taxes are essentially the same, differing only in form, the author suggests adopting the method of converting fees into taxes under the condition of annual payment. While levying taxes on real estate, separate valuations of houses and land should be conducted to promote the development of land use tax and property tax, with separate levies imposed on each. The reasons for advocating the application of land use tax rather than land use fee are as follows: First, taxation is legal in nature. Land use fee is actually a type of administrative fee. Regulating its scope, collection methods, and tax rates through explicit legislative provisions makes it more secure, controllable, legal, and legitimate compared to administrative fees, in line with the requirements of governing the country by law. Second, since land use tax is a legally prioritized claim for repayment, in cases where the land use tax is unpaid or not fully paid, it can be given priority in payment, which is legally grounded. Third, the collection of property tax and land tax can be carried out simultaneously, achieving a double effect with one action. Overall, the issue of whether to charge fees for the renewal of residential construction land use rights and how to charge them is extremely important, and at the same time, the issue of fee reductions and exemptions cannot be ignored. In fact, the academic community has currently neglected the issue of fee reductions and exemptions[12]. However, for protecting people's livelihood, the issue of fee reductions and exemptions deserves further research, and its important status is no less than that of whether to charge fees for the renewal of residential construction land use rights and the methods of charging. From the legislative perspective of the provisions on reductions and exemptions, such provisions are undoubtedly based on the basic requirement of protecting people's livelihood. Granting reductions or exemptions to those who indeed have difficulties in paying the renewal fees in reality, fully considering the situation of the people, not only reflects the flexibility of legislation but also helps to narrow the gap between the rich and the poor. Therefore, equal attention should be paid to the issue of reductions and exemptions for renewal fees.

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