

# *The Right to Residence from the Perspective of Explanatory Theory*

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**Abstract:** The right to residence is an important system in the Civil Code, which stipulates that the holder of the right to residence has the right to occupy and use the residential property of others according to the contract to meet the needs of living. The establishment of this system aims to meet the demand for residence rights in our society and has important social significance and legal value. However, there are some problems with the provisions on the right to residence in the Civil Code, such as unclear expressions, unclear references, insufficient norms, and inadequate institutional connections. This requires us to further interpret the rules of residence rights from the perspective of civil law hermeneutics, taking into account the literal meaning of the law, legislative intent, basic systems of beneficial property rights, social effects, etc. When implementing the registration of residence rights, we need to consider two modes: one is the registration effect doctrine established by contract, and the other is the registration opposition doctrine established by will. Not all residence rights must be registered to be established, and we need to take into account the legal risks of circumventing mandatory regulations due to registration. At the same time, for the convenience of public power supervision and maintaining transaction security, the registration of residence rights should adopt a substantive review mode. The subjects of residence rights registration include natural persons, legal persons, and other organizations. The object of residence rights is real estate, which should meet the definition of certainty and specificity required by the Civil Code for "things." Houses on farmers' homesteads can set residence rights for specific subjects and register them. In addition, we should also refer to the way of land area allocation of separate ownership to establish a value standard for the paid establishment of residence rights.

## 1. Introduction

The "Property Rights" section of China's Civil Code has introduced the system of habitation rights, aiming to meet the long-term and stable residence needs of people with specific identities or relationships in the homes of the property owners. This is of great significance for achieving the goal of "having a place to live" and promoting the harmony and stability of family relationships. However, the Civil Code only contains six articles on habitation rights, which are abstract and general, making it difficult to meet the specific adjustment needs of habitation rights in aspects such as establishment, contract signing, registration, circulation, and termination. For example, although

habitation rights belong to usufructuary rights, their strong personal attributes require special regulations in the registration rules. The Civil Code has established the principle of registration establishment for habitation rights, but it does not provide clear answers to questions such as "how to register" and "what to register." In addition, the registration procedures for habitation rights established through contracts and wills should be differentiated, and the possibility of future paid establishment methods should be considered. Therefore, the establishment scenarios of habitation rights need to be further improved, and it should be clarified which situations are reasonable and legal and should be supported, and which situations may require cautious handling or non-registration due to breaches or evasions of current management systems.

Should the real estate registration authority review habitation rights? Article 212 of the Civil Code grants the real estate registration agency corresponding substantive review duties. Given the personal attributes of habitation rights and possible regulatory needs, establishing a substantive review model is necessary and reasonable. However, there is still considerable room for interpretation regarding specific review standards and methods. As a usufructuary right with personal attributes, the registration elements (subject, object, and content) urgently need clear regulations.

The introduction of habitation rights has made the types of rights above a single house more abundant, perfecting the system of "having a place to live," but it has also caused conflicts between various rights. For example, if the original residence has been sealed or mortgaged, can habitation rights be legally established again? If so, is the consent or notification of the mortgagee required? Also, when establishing habitation rights by will, there may be issues with the connection between the registration of habitation rights and the transfer registration of the will. That is, if Person A establishes habitation rights for Person B while being both the heir of the house and the owner, since inheritance necessarily involves changes in property rights, there may be overlapping situations where both habitation rights registration and ownership transfer registration are needed at the same time. How to coordinate rights and connect rules? There are countless examples like this. This article explores three major issues: the habitation rights registration system, the review model, and the connection of rights from the perspective of habitation rights registration, seeking specific refinement and implementation of habitation rights regulation.<sup>[1]</sup>

## **2. Scope of subject of residential rights**

### **2.1 The identity attributes of the subject of residence rights**

Some scholars understand the "personal nature" of the right of residence as "a question about the duration and scope of the rights, which are unrelated to kinship." The range of people with residence rights can be expanded from subjects such as "parents, divorced spouses, and nannies" to "distant relatives, friends, homeless children taken in, widowed elderly, heirs without inheritance rights or in the second order of inheritance, long-term cohabitants not married, administrative organs and staff members of public institutions entitled to residence rights for public housing," and even "anyone without a place to live can become the subject and beneficiary of the right of residence," regardless of whether there is a specific identity relationship between the person with residence rights and the owner of the house. There have also been legislative suggestions in the past to "increase a provision on the scope of residence rights by combining enumeration and openness." After the promulgation of the Civil Code, some scholars pointed out that "who the owner sets up residence rights should belong to the scope of his autonomous will," and it should not be restricted, but based on the identity of the person with residence rights, determining the scope of the subject would be more in line with the purpose of the system.<sup>[2]</sup>

On the one hand, the Property Rights Chapter is the most "public power" attribute part of the

Civil Code. The report of the 19th National Congress of the Communist Party of China proposed to "accelerate the establishment of a housing system with multiple suppliers, multi-channel security, and combined rental and purchase to ensure that all people have a place to live," so the right of residence is considered "helpful in providing legal protection for public rental housing and elderly people who use their homes to support themselves," implying that the social effects sought by the residence rights system are not aimed at all objects; on the other hand, although there is no tradition of servitude in our country, in terms of legislative strategy, instead of starting from scratch, our country chose the strategy of making the least changes under existing conditions, introducing foreign practices into our country for discussion, innovation, and finally inclusion in the code. Therefore, when applying the residence rights system specifically, it will still be influenced by the "inertia" brought by Roman law for thousands of years, or the constraints imposed by past historical experience on the current set of choices. However, when adopting relevant interpretation paths to determine the "scope of the subject" of residence rights, comprehensive consideration should be given to factors such as China's legislative objectives, the social effects sought, and the laws of the residence rights system itself.

## 2.2 The Path of Layered Typeization Expansion

Firstly, the identity relationship formed based on ethics (or relying on kinship law) is the initial exclusive characteristic of the right to residence, and also the most core level of identity. The core identity level groups specifically include spouses, parents (including biological parents, adoptive parents and stepparents with dependency relationships), children (including legitimate children, illegitimate children, adopted children and stepchildren with dependency relationships), brothers and sisters (including brothers and sisters with parents, half brothers and half sisters, adopted brothers and sisters, step brothers and sisters with dependency relationships), grandparents, maternal grandparents, grandchildren Granddaughter and grandchild. Although the legislation of the Civil Code did not adopt a collaborative model of property rights, marriage and family, and inheritance, the establishment of the core identity of the subject of residence rights should be consistent with the marriage and family and inheritance. Scholars have pointed out that in the process of amending the Inheritance Law of the People's Republic of China, there should be clear provisions on the legal right of spouses to reside in marital housing; During the drafting of the right of residence system, there were also calls for legal residency rights to be regulated for parents, but they were ultimately not adopted. However, based on ethical considerations, in the event of a dispute, the owner should prioritize the protection of the residency rights of their spouse, parents, and other relatives, or directly determine their residency rights through an agreement. The practice of "housing for elderly care" is also based on ethical and rational identity relationships. There are roughly two types of elderly care through the establishment of residential rights. One type is based on the first layer of identity relationships, such as parents giving ownership to their children (or elders to younger generations) and establishing residency rights for themselves, or designing the rights of family members such as old husbands and young wives; Another type is agreements reached with third-party traders who are not related. Both types first transfer ownership with or without compensation, and then establish the right of residence under a new property right relationship. The practice of the former can effectively avoid disputes over ownership and residence rights within the family; The extent of practical space for the latter based on China's traditional family concept is unknown.<sup>[3]</sup>

Secondly, identity relationships formed based on work and learning environments are a reflection of social attributes. If the first layer of identity relationships is based on intimate relationships in the private domain, then the second layer of relationships is based on the public domain. All

relationships are ethics; ethics begins with the family, not just the family. Among various forms of relationship scenarios, besides family, the learning and work environment is undoubtedly the most typical, but for the subject of housing rights, the second layer of relationship should still be limited. Only the two parties who form a strong relationship in work, study, and other contexts are the identity referred to in the second layer of residency rights, which can be judged through four dimensions: "length of understanding time", "frequency of interaction", "intimacy" (content shared with each other), and "content of reciprocal services". Generally speaking, the longer the interaction time, the more interactions, the closer the relationship, and the more reciprocal exchanges between the two parties, the stronger the relationship; otherwise, the weaker the relationship. Although the relationship between strength and weakness is relative, when disputes arise, judges can give different dimensions of weight based on individual cases to present objective differences.<sup>[4]</sup>

Thirdly, the identity relationship formed based on national or local policies is mainly manifested as the relationship between government leadership and relevant rights holders to achieve social security functions. For example, at the national level, setting up residency rights for low-income and other vulnerable groups; Or when local governments introduce talents, they may use the right to residence as a possible means of protection. At this point, the conditions that an individual possesses constitute their identity characteristics that enable them to form a consensus with the state (or local government), distinguishing them from those who are unable to enjoy such policies. Since the reform and opening up, the progress of housing security work in China has been limited to 2007. However, progress has been slow since 2007, and a housing security system has gradually formed since 2007. With the "Several Opinions of the State Council on Solving the Housing Difficulties of Low Income Urban Families" (Guofa [2007] No. 24) as a symbol, China has returned to the model of "market and security are equally important" and "rental and sales are simultaneously implemented". Therefore, in addition to being a market-oriented behavior, housing issues also have policy implications. In the context of housing security reform, the right of residence rules can make up for the shortcomings of the theory of shared ownership in constructing a system of shared property rights housing, or achieve innovation in other policies in the future. This policy identity layer is neither a core identity layer based on ethical ties or legal drafting, nor a social identity layer formed through social interaction. Instead, it passively establishes relationships with others, which is an unconscious "embedding" and therefore has instantaneity and externality. It is necessary to ensure the stability of policies to fully protect rights holders.<sup>[5]</sup>

The classification perspective of the above three levels is based on the characteristics of the identity attributes of the subject of the right of residence, and is interpreted in a hierarchical manner with the owner as the center, in order to include groups of people outside of family relationships, while also excluding those outside the three levels - the protection of the residential rights of other people is either achieved through other legal relationships or incorporated into the three levels through the transformation of identity attributes to establish the right of residence. The purpose of adopting hierarchical typology is to highlight the differences between levels, with consideration of different priorities in case analysis, and to allocate rights and obligations reasonably to avoid overemphasizing contracts and neglecting individual identity.

### **2.3 The significance of clarifying the scope of the subject of residential rights**

Firstly, determining the scope of the subject of the right of residence through a typological approach can help resolve disputes or serve as a reference. For example, when dealing with disputes involving residential rights, the first consideration can be whether there are various relationships between the parties mentioned above, and after determining these hierarchical relationships, analysis can be conducted in combination with relevant laws and factual situations. For example,

regarding issues such as daily maintenance costs, property management fees, and housing repair costs, China's current legislation on the right of abode has not been mentioned compared to the draft version of the Property Rights Law. In the absence of relevant agreements or agreements that cannot be fulfilled by both parties, if a dispute arises and cannot be resolved through negotiation and enters the litigation stage, there may be differences in the specific allocation of responsibilities, leaving room for the judge's discretion.

Secondly, the determination of the scope of the subject of the right of residence also provides possibilities for the common form of the right of residence. There may be theoretical and practical contradictions in whether multiple residency rights can be established on a property, and explanations that are beneficial to the parties should be used to promote the effective utilization of the property. Due to the fact that the right to residence is established at the time of registration, the entire residence is often registered during registration. In practice, it is possible for the owner to divide a residence into multiple spaces, resulting in a subjective coexistence of "residential rights", similar to the handling method of house leasing. However, the problem lies in the fact that the right to residence is established at the time of registration, while the lease of a house can be fulfilled upon mutual agreement between the parties; Once the right of residence is registered, it is bound to be the registration of the entire residence, adhering to the principle of object specificity of property rights. There are two ways to handle this situation: one is based on the principle of "one property, one right", where the registered right of residence remains the same. However, if other people have a relationship with the right of residence, such as care services (necessary for daily life), blood ties, etc., they can become actual residents and "are indirect beneficiaries of the right of residence". However, people of other levels of identity cannot directly reside in someone else's house for free; Another possibility is derived from shared states. According to Article 310 of the Civil Code, "If two or more organizations or individuals jointly enjoy usufructuary or security interests, the relevant provisions of this chapter shall apply accordingly." The term "quasi co ownership" refers to the sharing of rights. As a form of usufructuary right, the right to residence can also refer to the relevant provisions of common chapters. That is to say, two or more individuals jointly enjoy the right of residence, forming a "quasi co ownership" state, and jointly registering this right, that is, a right is established for multiple people, rather than multiple identical residency rights on the same thing. There are two ways to establish a shared state: first, the right to residence is established from the beginning; The second is that the right of residence is established for the other party with the consent of the owner. However, the co ownership of the right to residence must be based on identity relationships and is limited to co ownership relationships, such as marital relationships and joint inheritance, among other first level relationships. There is no such thing as a share based co ownership relationship. The original intention of setting up the right of residence is to solve the problem of residence, mainly free of charge. If the owners form a joint ownership state based on the contribution shares of different people, it will go against the original intention of legislation and cause problems in practice - for example, if the right to residence is regarded as a relationship that can be formed based on shares, it will inevitably be transferable and divisible, which goes against the characteristics of the right to residence, and therefore cannot effectively protect the parties in the event of disputes. The current law in our country is based on the principle of shared ownership by shares, with common ownership as an exception. This legislation precisely conforms to the characteristics of the identity of the right to residence mentioned above, but on the basis of shared ownership, it makes it possible for multiple individuals to have the same right to residence.

Finally, considering the free nature of the establishment of the right to residence, considering the subject's identity as a factor in disputes can help avoid moral hazard. For example, during the existence of the marital relationship between Party A and Party B, Party A and Party C agreed in the contract that Party C had the right to reside in Party A's house and completed the registration

procedures for the right to reside, but Party B was unaware of it; Alternatively, Party A may specify in the will that ownership belongs to Party B and residential rights belong to Party C. In this case, does C have the right of residence when a dispute arises? If C is a third party who damages the marital relationship between A and B, then identity will become an obstacle for C to obtain the right to residence. If identity is not taken into consideration and anyone can obtain the right to reside, then in any case, C can obtain the right to reside. Although violating the provisions of public order and good customs can be considered invalid, when establishing the right of residence, the owner does not directly indicate their identity in the contract or will. Once presented as a "weak person" without a house to live in, does violating public order and good customs appear powerless; For example, whether there is a situation where the right of residence is established for the purpose of tax avoidance, which is actually a rental or sale of a house. Admittedly, this situation cannot be completely avoided, but based on the determination of the scope of the right of residence subject, at least it can provide space for reflecting on the legitimacy of some actions.

### **3. Limitation of the Object Scope of Residence Rights**

#### **3.1 Ordinary commercial housing residential (including existing housing and pre-sale commercial housing)**

Ordinary commercial residential houses refer to those constructed by real estate development enterprises on state-owned construction land, which can be legally registered to obtain a property right certificate and traded in the market within the scope allowed by laws and policies, providing people with living accommodation. In practice, these types of residences are usually divided into existing houses and pre-sale commercial housing. The owner of an existing house has the freedom to dispose of their property, and establishing a right of residence is one way for them to exercise their rights, making existing houses undoubtedly the subject of a right of residence. However, there is currently controversy over whether a right of residence can be established on a pre-sale commercial housing project that is still under construction.

Some people believe that a right of residence does not have the nature of an expectant property right, and only actual existing houses can have a right of residence established, not incomplete construction projects. However, there are also different views. Firstly, Article 366 of the Civil Code merely emphasizes the "need to meet living accommodation requirements," without explicitly stating that this need must be a real need. Therefore, we cannot infer that a right of residence can only be an acquired right, and its subject must be an actual existing item. Secondly, limiting the "need to meet living accommodation requirements" to real needs will not effectively address problems arising in social practice. For example, when the owner of a residence wants to transfer their property but still hopes to continue living in the house after the transfer of ownership, although this living requirement is not real, it is a reasonable expectation and legitimate claim that should be protected. This protection can be achieved through systematic interpretation of the Civil Code and the use of advance registration systems. Specifically, the assignor (owner) can simultaneously enter into a contract for the establishment of a right of residence with the buyer when signing a house purchase contract with them. The purpose of establishing a right of residence on the buyer's future owned residence is to protect the assignor's (owner's) living needs for "the buyer's residence," where the contract for the establishment of a right of residence falls under the category of "real property rights agreements" regulated by advance registration, allowing for such registration. When transferring the ownership of a residence to the buyer in the future, the advance registration can be upgraded to a formal registration, and the first registration of the right of residence can be processed, thus protecting the reasonable expectations of the owner. If the "need to meet living accommodation requirements" is limited to real needs, then addressing such needs will be impossible, which is

unacceptable. Lastly, although a pre-sale commercial housing project under construction is not an actual existing item, if the buyer wishes to retain the right to live in the completed house when the ownership of the house is transferred to someone else in the future, this is also reasonable. For example, parents may buy a pre-sale commercial housing unit for their children but wish to retain the right to reside in a portion of the house to realize future living benefits. This situation can also be protected through the advance registration system, where parents can sign a commercial housing pre-sale contract with the real estate development enterprise and a contract for the establishment of a right of residence with their children when purchasing a pre-sale commercial housing project under construction, while processing the advance registration of both the pre-sale commercial housing and the establishment of the right of residence. Upon completion of the house, when processing the formal registration of ownership (i.e., transfer registration) for the children, the formal registration of the parents' right of residence (i.e., the first registration) can be processed. Thus, it can be seen that both existing houses and pre-sale commercial housing can have a right of residence established.

### **3.2 Obtaining full property rights of policy housing**

In China, there are various types of policy commercial housing, such as affordable housing (including collective housing) and shared ownership housing. The purchaser of affordable housing initially holds a limited property right, but after purchasing for 5 years, they can choose to list the property for sale, at which point the buyer will obtain full property rights. In addition, the purchaser can also choose to pay certain land revenue and related fees to the government to obtain full property rights, thereby transforming the affordable housing into ordinary commercial residential housing. For shared ownership housing, the purchaser and the government jointly hold the property shares. After purchasing for 5 years, the purchaser can purchase the government's share and thus obtain full property rights. Shared ownership housing can also be put up for sale, and buyers will legally acquire ownership, turning it into ordinary commercial residential housing. Whether it is the housing with full property rights obtained by the purchaser or the housing acquired by the buyer through transactions, both can be traded in the market like ordinary commercial residences and can become the object of the right to residence.

### **3.3 Commercial apartments, serviced apartments, and hotel-style apartments**

Commercial apartments, serviced apartments, and hotel-style apartments are usually built on commercial or mixed commercial and residential land with residential functions, but they are not traditional residential buildings. In some cases, hotel-style apartments and serviced apartments may be defined as residential buildings and subject to residential management standards. However, in most cases, these apartments belong to non-residential buildings that combine living and office/business functions and are referred to as quasi-residential buildings. The main differences between them and residential buildings are: different design and construction standards, inapplicability of the National Standard "Residential Design Specification" (GB 50096-2011), requirement for fire protection design according to public building standards under the "Building Design Fire Protection Code" (GB 50016-2014), land use duration typically 40 or 50 years due to being mostly built on commercial land or mixed commercial and residential land, and structural requirements that often require these apartments to have a public building facade, enclosed balconies, no overhanging balconies if outdoor air conditioners are required, etc. Moreover, upon expiration of the construction land use rights for non-residential buildings, there is no automatic renewal provision. So, can these apartments have the right to residence established? Advocates believe that since these apartments have both commercial and residential possibilities, the right to

residence can be directly established on them; opponents argue that registration agencies cannot recognize hotel-style apartments and other residential function buildings as residences and therefore cannot establish the right to residence. They believe that commercial and office buildings are not residences and cannot serve as objects for establishing the right to residence. I believe that although these apartments are not planned and approved as residences, they do have residential functions. When policies allow and under certain conditions, these apartments can be used for living, thus having the prerequisites for establishing the right to residence. At the same time, under the policy background of "homes are for living in" and ensuring that all people have a place to live, recognizing that these apartments can establish the right to residence can promote the optimization of the housing supply side and practically support the construction of a diversified housing system with multiple suppliers, multi-channel guarantees, and equal emphasis on rental and purchase. This is consistent with the legislative purpose of the right to residence and has practical significance in meeting diverse living needs. Therefore, through teleological and expansive interpretation, commercial apartments, serviced apartments, and hotel-style apartments that are allowed by policies and meet the conditions for transfer for living purposes should be recognized as capable of establishing the right to residence and becoming objects of the right to residence, and should not be simply denied due to their non-residential status.

### 3.4 Rural Villagers' Housing

Rural villagers' housing refers to residential buildings constructed by rural villagers on the legally obtained homesteads for their own and their family members to live in, such as independent farmhouses, farmer apartments, and farmer residential communities. The characteristics of these houses are: the ownership of the house has specificity, usually belonging to members of the collective economic organization; the land is owned by the collective, and villagers have the right to use the homestead; the state has long prohibited urban residents from purchasing homestead rights in rural areas, and farmers' houses cannot be sold to urban residents. Homesteads can be transferred within the collective economic organization. Villagers' housing serves the purpose of meeting living needs and is a form of social security that ensures farmers' legal rights to housing. At the same time, rural villagers may also need to establish usufructuary rights due to reasons such as supporting their parents, divorce, or dividing property after separation. Therefore, it should be allowed to establish usufructuary rights in villager houses. Studies have shown that rural married women who get divorced cannot divide the common property of the homestead and find it difficult to apply for new homesteads in their natal families, thus their survival and residence rights may be threatened and infringed upon. For those rural divorced women who cannot return to their natal homes, have no place to stay after leaving their ex-husband's home, and still need to take care of their minor children, to ensure their long-term residence rights in their ex-husband's home, they should have the right to establish usufructuary rights according to the provisions of the usufructuary rights for a certain room in the house where they lived before marriage. However, it should be noted that villager houses capable of effectively establishing usufructuary rights must be legal structures and complete registration confirmation because illegal structures (such as small property rights) cannot be registered and confirmed, and farmers' houses without completed registration confirmation cannot complete the registration of usufructuary rights establishment under the condition of registration as a prerequisite for effectiveness, thereby unable to effectively establish usufructuary rights. In addition, the state encourages village collectives and farmers to revitalize and utilize idle homesteads and vacant houses, using vacant houses to develop rural-style homestays that meet the characteristics of the countryside, to truly increase farmers' incomes, promote integrated urban-rural development, and promote rural revitalization. It can be seen that homestays themselves are built on



homesteads and rural houses, although they have a business nature, but they originate from villager houses, and it should be allowed to establish usufructuary rights to achieve policy goals and fully exert their living functions.

#### 4. Conclusions

The subject of the right of residence refers to natural persons who enjoy the right of residence in accordance with the law, usually including residents and their family members. Due to the fact that the right of residence is essentially to meet the housing needs of natural persons, only natural persons are the legal subjects of the right of residence.

The right of residence system originated from Roman law and aimed to meet the living security needs of vulnerable groups such as family members who do not have inheritance rights or freed slaves, thus possessing strong identity attributes and contemporary characteristics. In later civil law countries such as France, Italy, Germany, and others, the right to residence was regulated through different legislative techniques in their civil codes and confirmed in the system of usufructuary rights. However, the identity attributes of the right to residence holder have never been weakened, following the tradition of mainly being limited to family members in history. Although the legislation on the right of residence in our country does not strictly define the "right of residence holder", exploring the scope of the right subject can provide explanatory space for relevant legislative gaps.

The object of the right of residence refers to the specific object pointed to by the right of residence. According to legal provisions, it is limited to houses, that is, buildings used for residential purposes. This includes various types of residential properties, such as commercial housing, affordable housing, rural homestead houses, etc., but does not include non residential buildings, such as commercial properties such as shops, factories, office buildings, etc. Article 366 of the Civil Code of our country stipulates that the object of the right of residence is "the residence of others", but in practice, the types and functions of residences are diverse. Compared to the legal provisions of other countries, some countries allow the right of residence to be established on a portion of residential property or public facilities. Therefore, based on the current laws and policies on land and housing in China, and from the perspective of interpretive theory, drawing on foreign legislative experience, this paper explores whether various types of housing can establish the right of residence, whether ancillary facilities of housing can become the object of the right of residence, and whether the establishment of the right of residence on a part of housing violates the specific requirements of the object of property rights. It is necessary to clarify the scope of "other people's housing" and the scope of application of the right of residence system Promoting the full play of institutional functions has important practical significance.

The legislative purpose of the right to residence is to meet the necessity of living and living. Therefore, the "residence" that can be established as the right to residence must first be a building with a planned purpose of residence or a residential function. For example, existing housing, pre-sale commercial housing, rural villager housing, etc. belong to the former; Business apartments, service apartments, and hotel style apartments belong to the latter. And those planned as buildings such as factories, shops, teaching buildings, museums, etc., shall not be granted residential rights unless their purpose is legally changed to residential. Secondly, the "residence" that can establish the right of residence must not be prohibited or restricted by laws, administrative regulations, or policies. For example, due to its social security function, the current policies have restrictions on its security subjects, acquisition methods, rental and lending, and listing transactions. Therefore, it is not advisable to establish residential rights on economically affordable housing until the policies are changed. Similarly, sealed residences are not allowed to establish residency rights. Thirdly, the

establishment of the right of residence shall not prejudice prior rights. For residential properties that already have lease or mortgage rights, the owner can establish a right of residence on the rented or mortgaged properties, as the current law has corresponding provisions for such situations and will not harm prior rights. But if the right of abode is established on a part of the residence, it may affect the prior right of abode, so the consent of the prior right of abode holder is required.

Regarding residential ancillary facilities, if they are essential to meet the needs of daily living, the right of residence on the residence naturally covers the ancillary facilities; On the contrary, it should be determined whether it becomes the object of the right to residence based on the agreement of the parties involved. In order to fully utilize the function of housing for living, only the residential part planned and designed as a living space can establish residential rights. According to the principle of specificity of property rights, the object of residence right at this time should be the entire residence, not a part of the residence.

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