

# Judicial Operation and Institutional Dilemmas of China's Statutory Habitation Right

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**Abstract:** Five years have passed since China's Civil Code incorporated the institution of habitation right. As a new type of usufruct transplanted from civil law *usus habitandi*, this right has undergone a complete transformation from statutory provisions to localized judicial practice. Based on judgment samples retrieved from China Judgments Online and typical cases released by the Supreme People's Court, this paper sorts out the temporal evolution, regional distribution and case category structure of disputes over habitation right in the past five years, and systematically summarizes judicial logic adopted by courts in confirming rights, resolving multi-party conflicts and providing civil remedies. The study finds that grassroots courts flexibly adjust statutory rules in response to local housing demands, expand valid ways to establish habitation right, and distinguish contractual creditor effect from real right effect generated by registration, thus forming a judicial paradigm balancing subsistence security and real estate transaction security. Nevertheless, several structural dilemmas emerge in practice, including inconsistent judicial standards across regions, insufficient normative provisions for special scenarios, disconnection between real estate registration and judicial enforcement, and lack of regulatory channels for sham habitation rights. From the perspective of localized legal transplantation, this paper analyzes the root causes of deviations between legislative expectations and judicial practice, proposes coordinated improvement measures from judicial unification, administrative supporting systems and prevention of right abuse, and summarizes China's experience of transplanted property rights to provide empirical materials for comparative property law research.

**Keywords:** Civil Code; Statutory Habitation Right; Legal Transplantation; Judicial Empirical Research; Conflict of Rights.

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## 1. Introduction

Housing security is a core research topic intersecting property law and social law. Driven by rapid urbanization and shifting family structures, traditional home ownership and housing leases fail to satisfy the long-term stable housing demands of the elderly and disadvantaged parties in divorce proceedings. The Civil Code of China added the institution of habitation right, a localized reform of Roman *usus habitandi*, which establishes a new usufruct centered on subsistence protection.

Existing domestic scholarship mostly focuses on dogmatic interpretation of statutory provisions, while sporadic case studies lack large-sample empirical analysis covering the five-year implementation period of the Civil Code. Comparative law studies abroad mainly focus on traditional *usus habitandi* in Germany and France, with little empirical evidence on the long-term judicial evolution of China's distinctive habitation right. Legal transplantation theory holds that foreign legal institutions tend to generate unintended consequences after being embedded in local social structures, and habitation right serves as an ideal sample to examine the interaction between statutory legislation and grassroots adjudication.

This paper adopts empirical analysis of judicial judgments and typical case research. Drawing on five years of public judicial data, it depicts the overall landscape of judicial practice concerning habitation right, extracts the pragmatic adjudication logic of judges, explains the internal drivers of gaps between legislative design and judicial reality, and finally reflects on localized adaptation of transplanted property rights, filling the empirical gap in existing literature.

## 2. Normative Foundation and Transplant Positioning of China's Statutory Habitation Right

### 2.1. Institutional Transplant Background and Dual Functional Orientation

The habitation right originates from personal servitudes in Roman law and is widely adopted by civil law jurisdictions as a tool for family housing security. China's introduction of this institution is not a mechanical copy of foreign rules, but a response to local practical demands including housing-for-pension arrangements and property division in divorce disputes [1].

The institution bears dual attributes. First and foremost, it functions as a protective mechanism. Tied to personal relationships, it safeguards the basic housing interests of vulnerable groups, consistent with the legislative goal of "adequate housing for all". Second, it carries a derivative function of property utilization: the elderly may retain habitation right while transferring ownership of their dwellings, balancing housing security and asset realization [2]. Distinct from construction land use rights and contracted rural land management rights, habitation right excludes pure investment and commercial functions, with social security as its core tenet.

### 2.2. Four Core Normative Structures under the Civil Code Framework

Articles 366 to 371 of the Civil Code lay the foundational rules of habitation right, serving as the normative basis for judicial adjudication [3].

First, diversified establishment channels. Written contracts and testaments are the statutory primary modes; judicial practice further recognizes effective judgments as a supplementary way to create habitation right, especially suitable for divorce and family property partition disputes [4].

Second, registration-based creation of real rights. A habitation right acquires real right effect only upon completion of real estate registration. A mere written contract without registration creates only creditor's rights, incapable of opposing third-party buyers or mortgagees.

Third, constraints on the scope of rights. The right is limited to possession and use for daily residential purposes; commercial operation is prohibited. Strict limits apply to housing renovation and the scope of co-residents. Fourth, restrictive rules on transfer. A habitation right cannot be assigned or inherited in principle; renting the dwelling subject to habitation right requires the consent of the owner. Legal persons lack the demand for residential living and are disqualified as holders of habitation right.

### **3. Empirical Analysis of Five-Year Judicial Practice Concerning Statutory Habitation Right**

#### **3.1. General Distribution Characteristics of Cases**

##### **3.1.1. Temporal Evolution**

In the first two years after the Civil Code took effect, the public and judiciary had limited understanding of habitation right, resulting in a small volume of cases dominated by basic right confirmation disputes. From the third to fifth year, disputes involving housing-for-pension, housing transactions and enforcement objections grew continuously, and case types became more complex. Judicial adjudication shifted from literal application of statutes to refined judgment balancing multiple interests.

##### **3.1.2. Regional Disparities**

Disputes are highly concentrated in highly urbanized regions including the Yangtze River Delta, Beijing-Tianjin-Hebei and Pearl River Delta, while the number of cases in central and western rural areas remains far lower. Such gaps stem from uneven regional real estate transaction activity, demand for family property division and maturity of supporting real estate administrative systems.

##### **3.1.3. Category Structure of Disputes**

All cases fall into four categories: right confirmation disputes account for the largest proportion, followed by habitation right disputes arising from divorce property division, conflicts between habitation right and mortgage/ownership, and tort remedies including obstruction claims and enforcement objections. The four categories cover the full lifecycle of habitation right: establishment, exercise, conflict and remedy.

#### **3.2. Localized Expansion of Judicial Standards for Right Confirmation**

Guided by a series of typical cases released by the Supreme People's Court [5], courts nationwide have broken literal statutory interpretation and formed unified adjudication logic for right confirmation.

First, lenient standards for recognizing establishment. A testamentary instrument may create valid habitation right without explicitly using the term "habitation right", provided

it clearly specifies the beneficiary, term and dwelling scope. When divorce parties reach an impasse in property division, courts may directly create habitation right via effective judgments, filling gaps left by contractual and testamentary establishment modes. Second, separation of real right effect and contractual creditor effect. While adhering to the registration creation rule, courts acknowledge that unregistered written contracts carry internal binding force. Right holders may claim specific performance of registration and demand elimination of obstructions imposed by the owner, balancing interests of contracting parties and external transaction third parties. Third, distinction between statutory habitation right and ethical residential interests. Long-term cohabitation or free residence among relatives does not automatically create statutory habitation right. Residential interests derived from family ethics only restrict the owner's claim to eviction to a limited extent, lacking real right erga omnes effect and preventing overexpansion of the habitation right institution. Fourth, rigid restrictions on eligible holders. Only natural persons may hold habitation right; legal persons and social organizations are excluded to avoid transforming the institution into a real estate investment tool and preserve its social security purpose.

#### **3.3 Resolution of Right Conflicts and Multi-Tier Remedial System**

First, uniform rule for competing rights: priority follows registration sequence. Conflicts between habitation right, mortgage and ownership are resolved by comparing registration dates. Where a party maliciously creates a habitation right subsequent to a mortgage to obstruct mortgage enforcement, courts may invalidate such habitation right which aligns with the adjudication philosophy emphasized in the second batch of typical cases released by the Supreme People's Court to balance subsistence protection and real estate transaction security [6]. Second, clarified boundaries of right exercise. Consistent judicial practice permits only necessary renovation without altering the main structural load of the dwelling; spouses and minor children of the right holder may co-reside as a reasonable extension of habitation right. Property management fees are borne by the owner absent express contractual stipulations. Third, multi-tier civil remedy framework. Four progressive remedies are available: claim for removal of obstructions as primary relief; claim for compensation for property losses; claim for specific performance to compel registration; enforcement objections to protect holders during compulsory execution, forming a complete closed loop of pre-litigation confirmation, in-course restriction and post-harm remedy.

### **4. Structural Dilemmas in Judicial Implementation of Statutory Habitation Right**

#### **4.1. Inconsistent Judicial Standards Across Regions**

Courts in economically developed regions adopt an open attitude toward judicially created habitation right, while courts in central and western areas interpret statutes more conservatively. When handling conflicts between habitation right and mortgages, some courts prioritize subsistence interests by reserving housing compensation from auction proceeds, whereas others strictly apply registration priority to

invalidate later-established habitation rights. Divergent judgments in similar cases undermine legal certainty, which aligns with the adjudication philosophy emphasized in the second batch of typical cases released by the Supreme People's Court [7].

#### **4.2. Insufficient Normative Supply for Special Scenarios**

The Civil Code only contains six brief articles with principled provisions. High-frequency disputed scenarios, including allocation of rights and obligations in housing-for-pension contracts, compensation distribution upon expropriation or destruction of dwellings, and the effective date of testamentary habitation right, lack unified interpretative standards, granting excessive discretionary power to judges.

#### **4.3. Disconnection Between Real Estate Registration and Judicial Enforcement**

Real estate registration authorities in many regions lack standardized procedures for registering habitation rights created by judgments or testaments, leading to refusal or delay of registration. Courts lack mandatory inquiry mechanisms for habitation rights before auctioning real estate, frequently triggering conflicts between buyers and habitation right holders. No standardized procedures exist for deregistration upon expiry of habitation right or compulsory eviction of recalcitrant holders [8].

#### **4.4. Absence of Regulatory Mechanisms Against Abuse of Rights**

Current rules lack unified identification criteria for sham habitation rights. Parties may fabricate habitation rights to evade enforcement or debts with limited judicial restraints. Where holders sublease or reconstruct dwellings beyond permitted scope, owners face ambiguous remedial channels, enabling institutional distortion.

### **5. Localized Coordination Paths for Transplanted Property Institutions**

Instead of advocating large-scale statutory revision, this paper proposes optimization solutions through unified judicial interpretation and coordinated administrative support: First, unify national judicial guidance, release guiding cases categorized by scenario, and mandate case retrieval mechanisms to reduce regional judgment divergence and realize consistent adjudication for similar cases. Second, formulate supporting implementing rules clarifying identification standards for housing-for-pension, housing expropriation and testamentary habitation right, narrowing judicial discretion. Third, connect judicial enforcement databases with real estate registration systems, standardizing full-process rules for registration materials, online inquiry and deregistration to realize coordination between administrative registration and judicial enforcement. Fourth, establish substantive review mechanisms for sham habitation rights, strengthen burden of proof for rights created shortly after debt occurrence, and clarify owners' right to terminate habitation right and claim damages in cases of abuse.

## **6. Discussion and Comparative Law Implications**

China's statutory habitation right stands as a typical localized reform of civil law personal servitudes, marked by prominent judicial activism. Within statutory gaps, courts proactively expand the scope of application to respond to local housing security demands, forming an operational model distinct from European civil law jurisdictions.

Legislative design originally confined habitation right to family security scenarios, yet the dual urban-rural real estate structure and demand for debt evasion generate numerous distorted applications, a typical institutional decoupling phenomenon in legal transplantation. Tensions between statutory norms and social practice cannot be eliminated merely by statutory amendments; coordinated governance combining judicial guiding cases and real estate administrative supporting systems is indispensable.

The empirical findings of this paper provide references for other developing countries introducing protective personal servitudes. Transplanting foreign property law institutions cannot rely solely on written statutes. Legislators must fully account for local housing structures and family property customs, grant moderate space for judicial adaptive interpretation, and simultaneously build supporting publicity and anti-abuse mechanisms to prevent institutional functional distortion.

## **7. Conclusion**

Five years after the Civil Code entered into force, China's statutory habitation right has formed a complete judicial system covering right confirmation, conflict resolution and remedy. Through activist statutory interpretation, courts have preliminarily realized adaptation between transplanted institutions and local livelihood demands. Nevertheless, structural contradictions persist, including inconsistent regional adjudication standards, inadequate rules for special scenarios, disconnection between registration and enforcement, and insufficient restraints against abuse of rights, which essentially reflect tensions between concise statutory texts and complex social realities.

Comprehensive revision of the Civil Code is unnecessary in the short run. Unifying judicial standards, improving real estate supporting mechanisms and establishing review systems for sham habitation rights can transform habitation right from nominal statutory rights into stable, predictable substantive protection tools. As a distinctive sample of China's property law system, the five-year judicial practice of habitation right also delivers Chinese empirical experience for comparative property law and legal transplantation theory.

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