

# Research on the Normative Application and Improvement Path of Residential Rights from the Perspective of the Civil Code

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**Abstract:** With the development of society and the increasing demand for living environment, the status of the right to housing in civil life is becoming increasingly prominent. The provisions on the right to residence in *the Civil Code* provide a legal basis for it, but it still faces many challenges in practice. This paper delves into the shortcomings of the current residential system from four aspects: the establishment of the right to residence, the scope of the object, the protection of human rights and interests, and the registration and cancellation system. The paper focuses on proposing targeted improvement suggestions, in order to promote the rational operation of the housing rights system and safeguard the people's housing rights and interests.

**Keywords:** *Civil Code*; Residency Rights; Applicable Standards; Improve the Path

## 1. Introduction

As one of the basic rights of citizens, the right to residence is an important guarantee for people's stable lives. With the acceleration of urbanization and the improvement of population mobility, the issue of ensuring the right to housing has received increasing attention. The *Civil Code*, as the fundamental law of civil law in China, provides the legal basis for relevant civil disputes regarding the right to residence. However, due to the complexity of social development and the backwardness of laws, the current residential rights system has shown many inadequacies in practical operation. Therefore, conducting in-depth research on the right to residence system from the perspective of the *Civil Code*, exploring its normative application and improvement paths, is of great theoretical and practical significance for maintaining social fairness and justice, and ensuring people's peaceful living and work.

## 2. The Significance of Improving the Right to

## Residence

### 2.1 Promoting the Improvement and Development of the Property Rights System

As a crucial part of the property rights system, the right to residence plays an important role in promoting the improvement of the entire property rights system. In real life, with the acceleration of urbanization and the enhancement of population mobility, the property rights transaction market is becoming increasingly active, but disputes caused by residential rights are also common. Therefore, it is crucial to clarify the legal status and rights and obligations of the right to residence. By standardizing the system of residential rights, we can further regulate the property rights transaction market, reduce transaction disputes, and ensure the fairness, impartiality, and transparency of property rights transactions. At the same time, the improvement of residential rights also helps to promote the further development of relevant property rights systems such as land use rights and housing rental rights. For example, in the housing rental market, the regulation of residential rights helps to improve the stability of rental relationships and protect the legitimate rights and interests of tenants. Overall, the improvement of the right to residence will promote the soundness and development of the entire property rights system.

### 2.2 Protecting the Legitimate Rights and Interests of Vulnerable Groups

The improvement of the right to residence system has profound significance in safeguarding the legitimate rights and interests of vulnerable groups. In real life, many vulnerable groups find it difficult to obtain stable housing conditions on their own due to various reasons, such as elderly people living alone and people with disabilities facing many difficulties in housing issues. By improving the housing rights system, housing security can be

provided for these vulnerable groups, ensuring that they can access suitable housing conditions and safeguard their basic rights to survival and development. In addition, the improvement of residential rights also helps to reduce social conflicts and contradictions. When the housing needs of vulnerable groups are met, the life pressure they face will be greatly reduced. This helps to reduce the likelihood of social tension and conflict. A harmonious and stable social environment is crucial for promoting social development and maintaining public interests.

### **2.3 Relieving Housing Pressure in Our Country**

With the acceleration of urbanization and population growth in China, housing issues have become one of the focal points of social concern. Improving the housing rights system can provide people with more housing choices and guarantees, thereby alleviating the housing pressure in China to a certain extent. Specifically, by clarifying the legal status and rights and obligations of the right to residence, it can promote the standardized development of the housing rental market and new forms of housing such as co owned property, providing people with more housing choices and opportunities. At the same time, the improvement of residential rights also helps to improve the efficiency of housing utilization, reduce waste, and further alleviate the housing pressure in China.

## **3. The Current Situation of Normative Application of the Right to Residence from the Perspective of the *Civil Code***

### **3.1 The Legal Basis for the Application of Residential Rights Norms**

The normative application of the right to residence is mainly based on the relevant provisions in the *Civil Code*. In the *Civil Code*, the right to residence is clearly defined as a usufructuary right aimed at meeting the housing needs of natural persons.

Regarding the establishment and elimination of the right of residence: According to the provisions of the *Civil Code*, the establishment of the right of residence should be in written form, and the basic elements of the subject, object, content, and duration of the right of residence should be clearly defined. At the same time, the law also stipulates several situations for the extinction of the right of residence,

including the expiration of the right of residence period, the death of the right of residence holder, etc. For example, in Article 366, it is stipulated that "the holder of the right of residence has the right to possess and use the residence of others in accordance with the contract, in order to meet the needs of daily living and residence." This provision clarifies the basic definition and purpose of the right of residence. It can be seen that the establishment and elimination of the right to residence have a clear legal basis.

The rights and obligations of the right of residence: According to the provisions of the *Civil Code*, residents have the right to possess, use, and benefit from it. However, the exercise of these rights is not unlimited, and residents also have corresponding obligations to fulfill. For example, Article 369 of the *Civil Code* stipulates that "the holder of the right of abode shall pay the consideration for the right of abode in accordance with the contract, bear the daily management and maintenance costs of the house, etc." This provision clarifies the payment and management obligations of the holder of the right of abode, aiming to balance the interests of the parties and ensure the normal operation of the right of abode system. Meanwhile, Article 370 stipulates that "the holder of the right of abode shall not transfer or inherit the right of abode. If the term of the right of abode expires or the holder of the right of abode dies, the right of abode shall be extinguished." This provision explicitly prohibits the transfer and inheritance of the right of abode, aiming to prevent the abuse and improper enrichment of the right of abode. These regulations aim to balance the interests of all parties and ensure the fairness and reasonableness of the right to residence system. [1]

Exercise and protection of residency rights: The *Civil Code* stipulates the exercise and protection of the right to residence. The holder of the right of residence shall follow the principle of good faith and shall not harm the interests of others when exercising their rights. When the right of residence is infringed upon, the holder of the right of residence can take corresponding legal remedies, such as filing a lawsuit. According to Article 372 of the *Civil Code*, residents have the right to file a lawsuit with the court and demand that the infringer bear corresponding legal responsibilities. This provision provides legal remedies for residents and protects their legitimate rights and interests from infringement.

In addition, the *Civil Code* also stipulates the obligation of residents to maintain their houses in order to ensure their normal use and value. According to Article 370, the right of residence holder shall bear the daily management and maintenance costs of the house, ensuring its reasonable use and maintenance. These regulations provide strong legal protection for the legitimate rights and interests of residents.

**Registration system for residential rights:** The establishment of the registration system is to ensure transaction safety and fairness, requiring the right to residence to take effect from the time of registration. For example, Article 371 stipulates that "the registration of the right of residence shall be handled by the real estate registration agency." This provision clarifies the jurisdiction of the registration of the right of residence and provides clear guidance for the parties to handle the registration of the right of residence. At the same time, this also helps to unify registration standards and procedures, improve registration efficiency and transaction security. Through the registration system, it is possible to effectively prevent conflicts of rights and false litigation, ensuring the normal operation of the right to residence system.

### 3.2 The Problems in the Application of Residential Rights Norms

There are fewer ways to establish residency rights. The *Civil Code* currently only provides for the establishment of residential rights through contracts and wills, without involving the establishment of residential rights through court judgments, administrative procedures, and other means. This approach to establishing residency rights may lack flexibility and convenience, especially in emergency situations that require rapid establishment of residency rights. In addition, for some special situations, such as domestic violence, divorce litigation, etc., the existing establishment methods may not be able to meet the needs of the parties involved. [2]

There are restrictions on the right to residence. The exercise of the right of residence is subject to certain restrictions, such as non transferable, rental, and shorter terms. These restrictive conditions may affect the scope of exercise of the rights of residents. In addition, due to the vague provisions on the elimination of the right to residence, there are different understandings and applications of the termination conditions

for the right to residence in practice. This may lead to confusion and uncertainty for residents in the exercise of their rights, thereby affecting the fairness and reasonable application of the housing rights system.

The scope of residency rights is unclear. The provisions on the scope of application of the right of residence in the *Civil Code* are not clear enough, such as the lack of detailed provisions on the scope of the object and content of the right of residence. This may lead to ambiguity and controversy regarding the scope of application of the right to residence in practice. For example, there is a lack of clear legal provisions on whether residential rights can be used for commercial housing, rural homesteads, and other issues. This may lead to difficulties and uncertainties in the application of the law in relevant cases.

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The provisions on the elimination of the right to residence are relatively vague. The provisions on the elimination of the right to residence in the *Civil Code* are relatively general, and there is no clear listing of the specific circumstances for the elimination of the right to residence. This may lead to different understandings and applications of the termination conditions for the right to residence in practice, which is not conducive to maintaining the certainty and unity of the law. For example, there is currently a lack of clear legal provisions regarding whether the right to residence is extinguished due to the loss of a property. This may lead to difficulties and uncertainties in legal application in relevant cases. [3]

## 4. Reference to Residence Rights in Other Countries

### 4.1 The Right of Residence System in France

The right of residence system in France has gone through a long development process and gradually formed a relatively complete legal system, with the following significant characteristics:

In France, the right to residence is considered a human right and is strictly protected by the constitution and laws.

The right to residence is an independent property right. According to French law, the right of residence is an independent property right owned by the owner of a house, which can be freely transferred, inherited, and mortgaged. The right of residence holder not only enjoys the right to use the house, but also has corresponding rights to income and disposal.

There are various ways to establish residency rights. The right of residence in France can be established through wills, contracts, court judgments, and other means. One of the most common ways is to establish the right of residence through a will, where the testator can designate an heir or testatee in the will to enjoy the right of residence in the house.

The duration of residency rights is relatively long. The duration of residency rights in France is usually longer, reaching decades or even hundreds of years. This long-term limited right of residence can ensure the stability of residents and provide a sense of security.

The protection of the rights and interests of the right to residence is complete. French law provides comprehensive protection for the rights and interests of the right to residence, and residents have the right to use, benefit from, and dispose of the property. In addition, French law also provides corresponding legal remedies, such as the right to sue for infringement of the right to residence.

#### **4.2 The Residential Rights System in the United States**

Compared to European countries, the characteristics of the US residency system place greater emphasis on marketization and contractual freedom. The residential rights system in the United States mainly has the following characteristics:

The rental market is developed. In the United States, the rental market is very developed, and many people choose to rent rather than buy a house. The lease contract is protected by law, and the tenant enjoys the right to use the house and corresponding rights protection.

There are various ways to establish residency rights. In the United States, there are various ways to establish residency rights, including leasing, additional conditions when purchasing a house, and so on. Some states also have established a legal system of "pre-emptive housing", which means that when a house is sold, existing tenants can have priority in purchasing the house. [4]

The legal remedies are relatively complete. In the United States, residents can protect their rights through legal means, such as filing lawsuits. In addition, the United States also has corresponding housing security agencies and legal aid agencies that can provide legal aid and housing security to vulnerable groups.

### **5. Strategies for Improving the Right of Residence from the Perspective of the *Civil Code***

#### **5.1 The Establishment Method of Sound Residential Rights**

From the perspective of the *Civil Code*, the establishment of the right to residence needs to be further improved and perfected to better meet the needs of social development. Firstly, currently, the right of residence is mainly established through two methods: contract and will, which are relatively single and cannot meet the needs of different situations for the establishment of the right of residence. Therefore, it is necessary to increase the ways of establishing residency rights. Therefore, it is possible to consider adding ways to establish the right of residence through court rulings. In some cases, if the parties are unable to reach an agreement on the establishment of the right of residence, or if there is a dispute, it needs to be resolved through the court. In this case, if the court can make a judgment based on specific circumstances to confirm the establishment of the right of residence, it will help protect the legitimate rights and interests of the parties. Secondly, while increasing the methods of establishing residential rights, it is also necessary to clarify the scope and conditions of application for different methods of establishment. Different establishment methods have their specific scope of application and conditions, and should be selected based on specific circumstances. For example, the method of establishing residency rights through contracts is applicable to the establishment of

residency rights between equal subjects; The method of establishing the right of residence through court judgments or administrative procedures is applicable to the establishment of the right of residence in specific circumstances. [5] Finally, in order to ensure the reasonable, accurate, and unified application of the right to residence, it is necessary to standardize the procedures and operations of different establishment methods. For example, corresponding laws and regulations or judicial interpretations can be formulated to clarify the operating procedures, required materials, legal effects, etc. of different establishment methods, so that the parties can have a clearer understanding and choose the appropriate method of residence rights establishment.

### **5.2 To Clarify the Scope of the Object of Residency Rights**

From the perspective of the *Civil Code*, it is crucial to clarify the scope of the object of the right to residence. This directly relates to the scope of application of the right of residence system and the legitimate rights and interests of the parties involved. In the *Civil Code*, concepts such as "house" and "residence" are the basic elements of the object of the right of residence, but the definition and scope of these concepts are not clear. Therefore, first of all, it is necessary to clearly define these concepts to avoid ambiguity and controversy in practice. For example, "house" can be defined as a building with independent, enclosed, and fixed physical space, while "residence" can be defined as a house used for living, emphasizing its residential function. By clarifying the definition and scope of these concepts, it is possible to better define the object scope of the right of settlement. Secondly, the specific scope of the object of the right of residence should be further clarified. In practice, the object of residential rights is not limited to residential buildings, but may also involve issues such as commercial housing and rural homesteads. Therefore, for commercial housing, it can be considered to be included in the scope of the object of residential rights, but its application conditions need to be limited, such as stipulating that commercial housing must meet certain living conditions in order to become the object of residential rights; For rural homesteads, it is also possible to consider including them in the scope of the object of residential rights, but it is necessary to consider

the special nature of rural homesteads and the limitations of relevant laws and regulations.

### **5.3 To Clarify the Relevant Rules for Protecting the Rights and Interests of Residents with the Right to Reside**

Clarifying the relevant rules for protecting the rights and interests of residents is directly related to the legitimate rights and interests of residents and the implementation effect of the housing rights system. Currently, although the *Civil Code* stipulates the rights and obligations of residents, the relevant rules are relatively vague and lack specific and clear operational guidelines, leading to some disputes and ambiguities in practice. Among them, house repair is a necessary guarantee for the normal use of the house by the right of residence holder, therefore the right of residence holder should enjoy the corresponding right to house repair. Specifically, residents have the right to inspect, repair, update, and renovate the house and its ancillary facilities to ensure the normal use and safety of the house. [6] At the same time, it is necessary to clarify who should bear the cost of repairing the house to avoid disputes in practice. In addition, it is necessary to clarify other rules for protecting the rights and interests of residents, such as their inheritance, transfer, and income rights. Clarifying these rules can reduce disputes and ambiguity in practice and better safeguard the legitimate rights and interests of residents. For example, the holder of the right of residence can inherit the right of residence in accordance with the law, or have the right to transfer the right of residence after the expiration of the term of residence. At the same time, residents can also enjoy corresponding income rights, such as rental income from renting houses.

### **5.4 To Optimize the Registration and Cancellation of Residential Rights**

The registration and cancellation system, as a key measure to ensure the safety and fairness of residential rights transactions, is of great significance in safeguarding the legitimate rights and interests of parties and ensuring transaction order. Therefore, from the perspective of the *Civil Code*, it is necessary to optimize the registration and cancellation system of residential rights. Among them, the registration authority is the institution responsible for the registration and cancellation of residential rights, and its jurisdiction and responsibilities should be

clearly defined. Therefore, the jurisdiction of the registration authority should be reasonably determined based on factors such as the object scope and regional characteristics of the right of residence, to ensure the effective implementation of registration work. At the same time, the registration authority should be able to complete registration and cancellation work in accordance with the law, accurately, and efficiently. In addition, further standardization should be carried out on residential rights transactions to ensure their safety and fairness; In this process, the application, review, acceptance, registration, cancellation and other links should be clearly defined to ensure the legality, transparency, and efficiency of the procedure. In addition, it is necessary to ensure that the relevant content is true, accurate, and complete, and that the basic information of the resident, the subject matter information of the residence right, and the rights and obligations relationship can be registered in detail for easy retrieval and verification.

## 6. Conclusion

Through the study of the right to residence system in the *Civil Code*, it can be found that in order to truly realize the protection function of the right to residence, it is necessary to face its shortcomings in practical operation and make targeted improvements. To this end, we can start by increasing the establishment methods, clarifying the scope of objects, optimizing the registration and cancellation system, etc., in order to better adapt to the needs of social development and protect the residential rights and interests of the people. In summary, the

improvement of the right to housing system is not only a progress in the legal system, but also a reflection of social civilization and fairness and justice.

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