

Research on Legal Issues of Homestead Use Right Inheritance

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Abstract

The right to use the homestead of the attached house should be inheritable property. For both living function and identity attribute of welfare housing land use right and the property of the legal heir properties, solution to inherit the land use right and a home a home of the law and the conflicts in the provinces, autonomous regions and municipalities directly under the central area of the standard question, successor when inheritance regardless of whether it is the collective economic organizations are members adhere to the housing land use right of the building, after inheritance, if the non-members of the collective economic organization do not live in the house for a period of time or a family with multiple houses does not meet the stipulated standard area of one of the two cases of "exceptional restriction", they shall be charged a fee and converted into the right to use or lease of collective business construction land, and the income from the conversion of rights shall be stipulated in a corresponding proportion to give the successor compensation to moderately revitalize the homestead system. To reduce the actual situation of idle house land.

Keywords: homestead use right, inheritance, usufruct

1. Introduction

On September 9, 2020, the Ministry of Natural Resources gave a clear answer to the issue of urban household registration children inheriting the right to use homestead. According to the reply, it is mainly divided into two parts. First, it is clear that children with urban household registration can inherit the right to use the homestead. The house on the homestead can be inherited naturally as private property, while the right to use the homestead cannot be inherited alone. Only when the house is attached to it, according to the principle of one premises, the

right to use the homestead can be inherited. The second is the registration rule, that is, when inheriting, the children should be registered in the real estate register as "the legal successor of the original member of the peasant collective economic organization".

2. Sorting out the Norms and Practice Status of the Inheritance of the Right to the Use of Homestead

2.1 Sorting out the Inheritance Norms of the Right to the Use of Homestead

In the Civil Code of the People's Republic of China, the owner of the right to the use of

homestead has the right to the land. In the sixth part, it is clearly stipulated that the private property of natural persons can be inherited according to law. However, the law does not mention matters related to the inheritance of the right to the use of homestead, nor does it mention whether the right to the use of homestead with the property of personal security belongs to the scope of the inheritance of natural persons. The revised Land Administration Law of the People's Republic of China in 2013 stipulates that the holder of the right to the use of homestead shall have limits on the area and quantity of the right to the use of homestead, and may appropriately release the idle homestead, but it still does not mention the issue of the inheritance of the right to the use of homestead. The Implementation Regulations of the Land Administration Law of the People's Republic of China, revised in 2021, mention that it is forbidden to force villagers to quit their residential land if they settle in cities. However, in the current effective standard law sources that can be used as the basis for judgment, there is no clear provision on the inheritance of the right to the use of homestead, or even anything related to it. Among the quasi-standard law sources that cannot be used as a basis for judgment but judges can choose to use at their discretion, Several Opinions of the Office of the Central Rural Work Leading Group of the Ministry of Land and Resources, the Ministry of Finance and the Ministry of Agriculture on the Confirmation, Registration and Certification of Rural Collective Land mentioned that for those who inherit houses and occupy the homestead under the houses, no matter their status, no matter whether they are members of the collective economic organizations, can be registered, no matter whether it is a member of the collective economic organization. In addition, the relatively clear source of quasi-normative law on homestead inheritance in recent years is the clear reply given by the Ministry of Natural Resources to the proposal of the Third session of the 13th National People's Congress in 2020.

2.2 Status Quo of the Practice of Inheritance of the Right to Use Homestead

Since there is no clear and specific regulation on the inheritance of the right to the use of homestead at the level of normative law source, there are different judgments in judicial practice. Even if the Ministry of Natural Resources gave a relevant reply in 2020, it can only be used as a

quasi-normative law source, and judicial practice still conflicts with each other after the reply. In terms of whether the right to the use of homestead can be inherited separately, most judgments follow the reply of the Ministry of Natural Resources. "Yang Fengchun et al v. Jingziguan Town People's Government of Xichuan County Land Administrative registration administrative dispute case" the Xichuan County court of Henan Province held that the rural house and its homestead use right should be inherited as one. In the "Chen Jin v. Chen Changhai Restoration Dispute", the court held that the right to use the homestead could not be obtained by inheritance when there was no house, that is, the right to use the homestead could not be inherited separately. In 2022, the local court also ruled that the homestead under the house and the house should be inherited as one in the dispute over the division of common property between Wu Qing and Wu Guiping. "Chen Xuehong et al v. Chen Xiaofang Homestead inheritance Dispute" involved homestead house demolition compensation analysis property inheritance dispute, as the inheritance of homestead house demolition compensation can only be inherited, and denied the homestead use right compensation can be inherited, the court indirectly denied the homestead use right can be inherited separately. However, the opposite situation still exists in practice. For example, in the "Zhong and Xu inheritance dispute" of Yongfeng County People's Court of Jiangxi Province in 2022, the homestead use right of the open part of the courtyard in front of the self-built house is allowed to inherit, and the court's one of premises in this case refers to the inheritance of the homestead use right, and the buildings on the homestead use right should be inherited at the same time. That is, it affirms that the individual homestead use right can be inherited and allows self-construction of houses on the inherited homestead. In denying the ruling that the right to the use of the house land can be inherited separately but can be inherited together with the house, the issue of the subject of inheritance appears. "Xue Wantian v. Xinfu District People's Government of Xinzhou City Land Administrative Registration case" affirms that urban household registration personnel have the same inheritance right to the right to use the house land attached with the house as members of the collective economic organization.

In the wording of the judgment, most judges affirm that because of the above-ground house, the right to use the house land under the house has the inheritance right. However, because the right to use the house land is a property with special status and welfare attributes, in recent years, the court has gradually used different wording in the judgment for the inheritance disputes of the right to use the house land with the house on it. In the case of “Liu Lingxian and Cheng Xiaohua’s exclusion of nuisance dispute”, the court ruled that after inheriting the house and obtaining the ownership of the house, the house land occupied by it can be used according to law, but it cannot obtain the right to use the house land with the nature of usufruct. In the case of “Lu Jixiang, Lu Jiyan real right Protection Dispute”, the court also denied that even if you inherit the house, you can not enjoy the same general property right to use the house land under the house because of the house. If you enjoy the general property right to use the house land under the house because the premises are one, then you can tear down the house originally as the estate and build another house after inheritance. In fact, it is to use the appearance of inheritance to occupy the land that does not belong to their own, even if it has the right to use the house and the house can not be inherited in the way of general property. “Baihu Hua and Baiji Ren property rights protection dispute” will inherit the house demolition self-built house situation.

3. Focus of Controversy and Academic Views on Inheritance of the Right to Use Homestead

3.1 Focus of Debate on the Succession of the Right to the Use of Homestead

The reply of the Ministry of Natural Resources in 2020 has aroused widespread discussion among many people and scholars. First, it is clear that urban registered children inherit the right to use the homestead, whether it deviates from the original intention of setting the right to use the homestead to provide residential security function and identity attribute for members of the collective economic organization? Second, the Ministry of Natural Resources affirms that the reason is determined according to the provisions of the premises attached to the house. However, the provisions of the premises are set in the Civil Code chapter of the construction land use right, and there is no provision for the use right of the house land to be borrowed. Third, the original intention of

the allocation of the right to the use of homestead is to be a member of the collective economic organization, with identity attributes, whether it belongs to the property that cannot be inherited according to its nature as stipulated in the Civil Code? Moreover, how to solve the problem that the allowed inheritance is contrary to the Land Management Law when one family has more than one house or exceeds the prescribed area?

According to the reply of the Ministry of Natural Resources, the above arguments are about whether the right to use the homestead of the attached house can be inherited and how to inherit it. There is no big argument that the right to use the homestead can not be inherited separately. Therefore, the inheritance of the right to use the homestead discussed in this article is limited to the right to use the homestead built on the house, and does not include the independent right to use the homestead.

3.2 Academic Views and Interpretation on the Inheritance of the Right to Use Homestead

3.2.1 Denial of the Right to the Use of Homestead

The controversy points of the first three aspects are the legitimacy of the right to use homestead that can be inherited. The negative side holds that the original intention of the establishment is to protect the housing function of the members of the collective economic organization (Liu Lu, 2019), but if the inheritance is affirmed, it is contrary to the original intention. With the continuous expansion of the scale and number of inheritance, the proportion of members who really belong to the collective economic organization will decrease and the situation will appear that the new households have no land to divide. The unity of premises is limited to the unity of disposition between the building and the right to use the construction land. The Civil Code does not stipulate that the unity of premises can be applied between the right to use the homestead and the attached house (Gao Shengping, 2019). The negation theory seems to have some rationality. However, after careful discussion, although the original intention of the establishment of the right to the use of homestead has obvious welfare and social security, to protect the members of the collective economic organization to live, this establishment only refers to the application of the right to the use of homestead (Cao Y F., 2020). In addition,

the current policy gradually tends to moderately activate the house land and gradually stimulate the property attribute of the house land. For example, in the Implementation Regulations of the Land Management Law, if the villagers are farmers and settle in the city, they cannot withdraw from the homestead as a condition. Since rural villagers do not take the identity attribute as the restriction to settle in the city, the right to use the homestead as a legal private property should not take the identity attribute as the restriction condition, and the affirmative inheritance can also take into account the certain identity attribute of the right to use the homestead in other ways. Although there is no stipulation between the real estate and the right to use the house land and the house, the law does not stipulate that it is not applicable, and the law can be used without prohibition. And if based on this point, the right to use the homestead of the attached house cannot be inherited, then the attached house is no longer meaningful even if inherited, and the gain is not worth the loss.

3.2.2 Affirmation of the Right to the Use of Homestead

Based on the above, the Department of Natural Resources' response that the homestead right attached to the house can be inherited is justified and in line with most current practices. Since the right to use homestead attached to a house can be inherited, it follows that the fourth controversy is discussed. Different from the negation of the inheritance of the right to the use of homestead, the affirmation of the inheritance of the right to the use of homestead is not only limited to the identity attribute and residence function of the right to the use of homestead should be protected. It believes that the property right should also be taken into account, and the inheritance right as a legal inheritance should also be legally protected. However, there are disputes on how to balance and focus the identity attribute, residence function and property right of the right to the use of homestead, and how to deal with the fourth point when one family has more than one house or does not meet the area standards stipulated by provinces, autonomous regions and municipalities. The affirmation of the right to the use of homestead is further divided into the theory of free inheritance, the theory of restricted inheritance, the theory of legal lease, the theory of secondary rights and the theory of

"freedom of reason/exception limited" of the right to the use of homestead.

The first is the theory of free inheritance. One side of this theory believes that the right to use the homestead attached to the house can be freely inherited like other legal inheritance, without considering other issues such as the qualification of the subject, and completely focuses on the property rights of the right to use the homestead, regardless of identity attributes and residence function (Jiang Hongren, 2012). Secondly, the restriction theory holds that the inheritance of the right to the use of the homestead attached to the house depends on the identity of the subject (Han Song, 2019). According to the legal leasehold theory, when inheriting a house, the right to use the house land under it is automatically transformed into the legal leasehold of the house land with the nature of creditor's rights, and the heir should pay a specified amount of rent to the collective to obtain the use room of the house land under the house (Chen Xiaojun, 2019). According to the theory of secondary rights, referring to the "three rights division" of contracted land, homestead forms the legal expression of "land ownership, homestead use right and secondary right". It is a new right derived from the right to use homestead, and this secondary right is also divided into multiple rights. Whether the inheritor is a member of the collective economic organization or not, when inheriting the house, he or she enjoys the land area under him or her, which is the house land lease without identity attribute derived from the right to use the house land (Gao Shengping, 2019). Since there is no substantial difference between the derived homestead lease right and the statutory lease right, both belong to the right of creditor's rights and are easy to cause practical confusion, the third right derived should be named as the right above land, which is consistent with the world naming on the one hand, and solves the problem of the identity attribute of the right to use homestead on the other hand. Finally, according to the theory of "freedom of cause/limitation of exception" succession, no matter whether a member of the collective economic organization is a member of the legal construction land use right or the legal land right of the homestead as long as there are exceptions (Xie Xiao, 2022).

With the continuous development of society, the increase of urban population and the expansion of population migration range, the theory of free

inheritance seems to meet the psychological expectations of most people to some extent in the short term. However, the expansion of the number and scope of free inheritance is not only an impact on and neglect of the current social welfare and identity attribute of homestead. It affects the unique living habits of the members of the collective economic organization, and increases the proportion of more and more residents without identity attributes, resulting in the original intention of the homestead system being set up in name only. However, the content of the restriction of inheritance theory is essentially to deny that the right to use the homestead attached to the house is inherited by the heir who does not have the identity of the collective economic organization. In fact, it is the essence of the negative faction under the guise of the affirmative faction. As for the legal leasehold theory, it is worth affirming that it takes into account the property attribute of the legal heir and the residence security function and identity attribute of the right to use the homestead, and finds a certain balance point between the two. Heirs who do not have the status of members of the collective economy can obtain the legal lease right of the homestead according to the houses attached to it to improve the utilization rate of the houses. Collecting rent on them is actually a form of urging them to make reasonable use of the houses, so as to reduce the possibility of idle homestead. Even if the inheritor cannot give the homestead and its house the living function because of various reasons, the collection of rent can also bring some compensation to the collective. Secondly, the subject who obtains the legal lease right of the homestead is the inheritor who does not have the identity attribute of the collective economic organization. This point distinguishes the identity attribute and maintains the specific identity welfare of the homestead itself to a certain extent. However, the legal leasehold theory also has some drawbacks. When the inheritor who is not a member of the collective economic organization inherits the house, the right to use the homestead land under the house is directly transformed into the legal lease right of the homestead land, which is unfair to such heirs. The lease itself has the nature of creditor's right, while the right to use the homestead itself is the nature of usufructuary right, and the validity of the creditor's right is weaker than that of usufructuary right (Li Fengzhang, 2020).

The inheritors of this kind acquire the right with weaker effect. And to pay a certain rent is equivalent to adding an additional obligation when the heir obtains the right of inheritance, which constitutes an additional burden for him and lacks legitimacy. Secondary rights say that no matter what the name of the third right is, it is essentially a virtual right when inheriting the right to use the homestead. What is obtained is not the inheritance of the right to use the homestead attached to the house, but the third right, which is contrary to the "can inherit the right to use the homestead" of the natural resources Department. When inheriting, the third right directly acquired by the successor is essentially a smaller and more restricted right than that of the homestead owner. Moreover, the third right directly acquired at the time of inheritance, whether it is the right to lease the homestead, the right to use the homestead land, or the right to use the homestead land for construction, has a direct infringement on the residence security function of the homestead itself. Without excessive and preparation, directly leasing or incorporating the right to use the construction land is to skip the basic residential function and change the essential attribute of the right to use the house land.

On the contrary, the inheritance theory of "freedom of cause/limitation of exception" of the right to use homestead is reasonable in all aspects. What it inherits at the time of inheritance is the right to use homestead, which is not contrary to the reply of the Ministry of Natural Resources and takes into account the property attributes legally inherited by the heir. In terms of the welfare of the homestead, it takes into account that if the area exceeds the prescribed area or does not belong to one household and one house, it will exceed some other rights. To a certain extent, it reduces the occurrence of idle and abandoned homestead and cannot make full use of it. But in the theory, can properly modify and complement, the theory there is no distinction to the status, will inherit the land use right of the main arguments of welfare of housing land use right, only consider more than one area of the standard or not and a housing situation, didn't consider the identity property. Therefore, we can give proper consideration to the identity attribute, the identity of the inheritor who is a member of the collective economic organization is described according to the original description, and the

exceptions limited are limited to the exceptions that do not conform to the unified household and one house or exceed the prescribed area standard. However, in the case of exceptions and restrictions that do not have the status of members of the collective economic organization, in addition to the original exceptions, the exception point that the residential land does not use the residential function for a long time and thus becomes idle or abandoned is added, and a certain period is set for it.

4. Homestead Use Right Inheritance Law Application Dilemma

Regarding the application of the inheritance of the right to the use of homestead, although the Ministry of Natural Resources has given a positive reply, and the current academic circle has a higher voice and a wider range of affirmative inheritance. However, in the case of affirming the inheritance of the right to the use of homestead, there are still difficulties in how to apply the law and how to balance the function and identity of the legal right to the use of the right to the use of homestead and the property attribute of the legal heir.

4.1 The Inheritance Subject of the Right to Use Homestead Is Not Clear

As we all know, the right to use homestead is limited by identity (Gao Hai, 2018; Li Huan, 2019). However, we should be clear that the status restriction of the right to the use of homestead only refers to the limitation when the right to the use of homestead is initially obtained. When the right to the use of homestead is initially obtained, the member status of the collective economic organization is required. At present, there is no clear distinction whether the inheritor of the right to the use of homestead has the same identity restriction as the initial acquirer of the right of homestead. It is not enough for the Ministry of Natural Resources to reply that urban children can inherit the right to the use of homestead. It should be made clear that the inheritor of homestead use right is not restricted by status at the time of inheritance.

4.2 The Term of Inheritance of the Right to the Use of Homestead Is Not Clear

Among the benefits of the right to the use of homestead, one is that the right to the use of homestead has no term. However, the original intention of this setting is to protect the housing function of the members of the collective

economic organization. If the inheritance of the right to the use of the right to the use of the house land is unlimited regardless of the circumstances, it will lead to a large number of idle house land and show an irreversible trend. Before the reply of the Ministry of Natural Resources that the right to the use of the house land attached to the house can be inherited, there will be cases where the membership of the collective economic organization is not inherited or the area of one house for one family or exceeds the area specified by the province, autonomous region or municipality directly under the central government, resulting in a large number of house land lying idle. If the inheritance of the right to the use of house land also has an indefinite term, then the successor who does not have the membership of the collective economic organization will inherit the house, and the situation of the house land will be increasingly idle. In current practice, the unlimited inheritance and free inheritance of the right to the use of the house land attached to the house lead to a large number of house land being left idle, and the house and the house land covered by it cannot be properly utilized (Xu Weidong & Du Zhonglian, 2018).

4.3 The Inheritance of the Right to the Use of Homestead Is Not Limited

In the current judicial practice, in the cases of obtaining the right to use the homestead due to the inheritance of the house, the right to use the homestead is only affirmed, and there is no restriction on the special circumstances such as idle homestead or multiple houses of one family or exceeding the area standard after the inheritance, that is, the free inheritance of inaction. However, in the judgment of "Liu Lingxian and Cheng Xiaohua's exclusion of nuisance dispute" that "the homestead can be used according to law, but the right to use the homestead with the nature of usufruct is not obtained", it can be seen that the free inheritance has been controversial and unreasonable. If the free inheritance of the right to the use of homestead is allowed, it will not only aggravate the idle situation of the homestead and reduce the utilization rate of the land, but also be obviously inappropriate and conflicting in the aspect of one house for one family or exceeding the prescribed area standard. Therefore, it is necessary to impose certain restrictions on the inheritance of the right to the use of homestead and give the "exceptional restriction" situation

of the inheritance of the right to the use of homestead.

4.4 The Right to Income from Homestead Can Be Restricted

From the perspective of the whole civil law system, the right to the use of homestead belongs to a kind of usufructuary right, which is mainly an abbreviation of the two rights of use and income. According to the Civil Code, as a usufructuary right, it only develops the two rights of possession and use due to its specific identity attribute, and its usufructuary right is temporarily suspended for the sake of welfare protection. Even if not all usufructuary rights have the four complete rights, however, in terms of the changes in the current social and economic conditions, it is no longer an obvious legitimate basis to insist on the identity attributes and welfare security of the right to the use of homestead without any adaptation. At present, the country implements the rural revitalization strategy to promote rural development and narrow the gap between urban and rural areas. Although the national and government policies and financial support provide a certain back-up guarantee for rural revitalization, the ironmaking needs its own strength, and the most important thing is that farmers themselves have assets that can participate in it. The biggest asset of farmers is the right to real estate, and the homestead is also a part of it. Based on this, the moderate development of the income right of the homestead is one of the important directions of the homestead system reform.

5. Countermeasures for the Legal Theory of Inheritance of the Right to Use Homestead

5.1 Clarify the Inheritance Subject of the Right to the Use of Homestead

Clarifying the subject of the inheritance of the right to the use of homestead is different from the initial acquisition, which is not restricted by identity. Since the right to the use of the house built on it belongs to the legal heritage because of the provisions of the unity of the premises, it should first be clear that the initial acquirer of the right to the use of the house land has identity restrictions. Different from the initial acquisition, the inheriting subject of the right to the use of the house land should not be limited to the membership of the collective economic organization. The membership of the collective economic organization is not static, the number

of people who work in cities to obtain urban household registration increases, marriage work and other relations lead to changes in the household registration of members of different collective economic organizations and other factors have led to increasingly frequent changes in social population mobility (Xu Weidong & Du Zhonglian, 2018). If the pursuit of inheritance is generally restricted by identity with the initial acquisition, it is not in line with the current situation. Therefore, as long as the heir meets the inheritance conditions stipulated in the inheritance law, he can inherit the right to use the homestead of the attached house like other general property. The membership of the collective economic organization is not a necessary condition for the inheritance of the right to the use of homestead.

5.2 Clarify the Term of Inheritance of Homestead Rights

It is clear that there is a time limit for inheriting the right to the use of homestead. Different from the initial acquisition of the right to the use of homestead, the term of homestead inheritance is not permanent. According to the different inheritors of the right to the use of homestead, the term can be divided into two categories. One is that the member of the collective economic organization inherits the right to the use of the homestead of the attached house as the successor. Such succession has unlimited term, provided that it does not violate one household or one house and exceeds the area prescribed by the province, autonomous region or municipality where it is located. This kind of inheritance will not lead to the idle situation of the house land, and has the function of housing security in the collective economy. It is consistent with the goal of the initial acquisition, and should not limit the succession time or limit its inheritance rights. The other is that the inheritor who does not have the status should not be permanent and a uniform period should be set for the inheritor. The successor who does not have the status qualification may be an urban resident or a member of other collective economic organizations. No matter what kind of successor, there is the possibility that the homestead itself will lose its due significance as a result of being far away from the collective economic organization, resulting in the homestead being idle and abandoned. In view of this, a certain period of time shall be set for them, during which their housing function shall be

guaranteed and the house land shall not be left idle, and they shall enjoy the same treatment as members of the collective economic organization. However, if the house land is left idle or abandoned beyond the prescribed period, the meaning of the house land itself will be lost. At this time, the residential property side of the right to use the house land itself should be protected, and the inheritor should pay a certain fee to the collective to ensure the utilization rate of the land.

5.3 Clarify the Exception Limitation of the Inheritance of the Right to Use Homestead

Make it clear that the inheritance of the right to the use of homestead is not a free inheritance, and there are certain restrictions. The “exceptional restriction” situation can be mainly divided into two situations. One is for the conflict with the Land Administration Law, the inheritor inherits the homestead there is more than one house or does not meet the requirements of the provinces, autonomous regions, municipalities directly under the circumstances, more than or does not meet the part of the exception. In the other case, for those who are not members of the collective economic organization, a certain period of time is set for those who are not members of the collective economic organization to prepare for their residence, and exceptional and restricted measures are taken for those who are beyond the period. In these two exceptional and restricted cases, if an exception occurs, the measures given to them are to charge fees, and at the same time, the right to use the homestead land is converted into the lease right or the right to use the collective commercial construction land.

The transfer of the right only occurs in the case of “exceptional restriction”, and the successor who is not in the two circumstances can give the house the normal use of the right to use the house land. Since there are no exceptions, the residential function of the right to use the homestead is guaranteed, and the homestead will not be idle at this time, and will not belong to the members of the collective economic organization living in it, and will gradually integrate into the collective economic organization within a certain period of time, so that customs will not be destroyed, and the identity attribute will gradually weaken. Does not belong to the contradiction point, the welfare attribute of the right to the use of

homestead and the legal inheritance of property rights have been taken into account and balanced, and there will be no conflict with Article 62. In the case of “exceptional limitation”, the subject of succession is given a certain amount of time and psychological preparation, and the additional charge is an obligatory measure against the improper exercise of power by the successor.

5.4 Appropriately Endow the Usufruct of the Right to Use the Homestead

In the case of “exceptional restriction”, merely collecting the rent of the inheritor cannot fundamentally solve the problem of a large amount of idle homestead, nor does it fundamentally move towards the trend of “moderate release of homestead”. Therefore, the right to use homestead under the “exceptional restriction” situation is transformed into other rights, and the village collective obtains corresponding benefits according to the transformed rights. The homestead has also been fully utilized. At the same time, the corresponding income is clearly stipulated, and the successor in the “exceptional and limited” situation should get the specified proportion of income as compensation for losing the right to use the homestead.

The other rights converted into can be divided into two rights according to the environment of the “exceptional restricted” homestead is in a large number of idle state or the “exceptional restricted” homestead is in a scattered state, respectively, the right to use the collective management construction land and the right to lease. When a large number of the house land gathered in a certain area is in idle state, there is no housing security function at the beginning of the house land allocation, and there is no problem affecting the unique habits of the collective economic organization. At this time, the property attribute of the right to use the house land can be fully utilized. If the village collective reports the part of the house land to the government and passes the examination and approval of the relevant departments, the right to use the house land will be converted into the collective business construction land use right network. The scattered “exceptional limited” house land is difficult to be incorporated into the collective business fitness land as a whole. In this case, it will be converted into a lease², and the collective, as the lessor of the contract, will lease the house land to others or rent it out for

farming and other purposes.

At this time, the right to use collective business construction land and the right to lease are different from the legal right to lease and secondary rights. It is the right to use the homestead that is lost when the successor does not lose the right to use the homestead in the specified period or the “exceptional restriction” situation that conflicts with a family and a house, rather than directly at the time of inheritance. The successor is given the time to make full use of it, but it must be compared according to the regulations after the conversion right obtains the income. The case gives the successor compensation. In the process, the inheritor may, of course, at any time renounce the right to use the homestead for the construction of the house, either on the basis of renunciation of the fees charged for it, or on the basis of renunciation of dissatisfaction with the right to conversion, or on the basis of dissatisfaction with the proceeds of conversion.

6. Epilogue

Since the reply of the Ministry of Natural Resources on the inheritance of the right to use homestead, the legal application of the inheritance of the right to use homestead has reached a climax in the academic circle, and there are still some legal gaps and defects in the legal inheritance of the right to use homestead. In order to take into account the welfare attributes of the identity of the right to the use of homestead and the function of residence and the inheritance rights of heirs. In the face of the inheritance law applicable housing land use right, the plight of the inheritance should be no property, no matter whether the successor of the collective economic organizations membership can through legal inheritance under the house and inherit the adhesion of housing land use right, to do not belong to the collective economic organization members including a successor to set a fixed time limit of town census register, within the time limit for fair use of the homestead. Those who use the residential land shall enjoy the same treatment as the members of the collective economic organization, while those who do not use the residential land within the prescribed period of time and cause the residential land to be idle shall be entitled to an “exception limitation” situation and be charged a certain fee. Fees shall be charged not only in the above-mentioned “exceptional and restricted” cases, but also in cases where the

successor of a member of the collective economic organization inherits multiple houses or does not meet the prescribed size standards. Based on the “exceptional restriction”, the right to use the homestead is transformed into other rights. According to the environment of the homestead, the right is specifically divided into the right to use the collective business construction land or the right to lease, and the successor is granted a certain proportion of income as compensation to improve the utilization rate of the current idle homestead and appropriately activate the homestead system. Of course, the midway inheritor has the right to give up his right to obtain the right to use the homestead under the inherited house due to the inheritance of the house, and the collective compensates the inheritor for the housing cost according to the local market value standard.

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