

Research on Property Issues in the Civil Code

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Abstract

This project studies the property service issues in the Civil Code and draws on the relevant laws and regulations of other countries or regions, such as the Multi-storey Building (Owners' Case Filing Group) Regulations in Hong Kong; through the study of the cases in successful property service areas, it further analyzes how to use the property owners conference and other institutions to communicate with the property service issues. Combined with the relevant provisions of the newly promulgated Civil Code, the specific measures to solve the property service problem are discussed, so as to better ease the contradictions and differences between owners and property, so as to achieve the purpose of improving the happiness index of residents and the harmony of "property owners".

Keywords

Property Service Contract; Civil Code; Property; Owner.

1. The Question is Raised

With the implementation of the Civil Code, the community owners "mixed" --"happy" because finally to regulate the community property behavior; "worry" is not known whether to deal with the current community property in the service process exposed problems.

For example, before the implementation of the Civil Code, if the owner fails to pay the property management fee within a certain period, he may be forced to cut off the water and power by the property service person. But now, the third paragraph of Article 944 of the Civil Code has clearly stipulated: "the property service person shall not take the above way for urging the payment of the property fee", but can it really solve the problem in real life? After investigation, it is not difficult to find that although the law has clearly prohibited property through such ways to urge property fees, but some residential property is still "go their own way", "tried and tried". Some even think that the above provisions are unnecessary, no "water and power", "how fast good province"; and a few owners are not "fuel-saving lamp", in the face of the property repeatedly call notice, against the "free clause", still continue to use the "free hydropower".

For example, many owners and property are prone to disputes on the distribution of public property income, because before this, the law did not explicitly stipulate how to distribute public property income, such as the community publicity board, corridor window advertising income. Many properties will directly integrate them into the enterprise value-added services without making an explanation, which is one of the important reasons for the contradiction and the dissatisfaction of the owners. In this regard, Article 282 of the Civil Code clearly stipulates that the income generated by property service enterprises, construction units and other managers by using the common part of the owners shall belong to the owners after deducting reasonable costs. However, in practice, there is still an uneven distribution of income, and even the phenomenon of income being swallowed alone by the property management is also common.

In addition, the service quality of property management is also a big contradiction. Property management often faces problems such as long payment time and great difficulty of payment. The root cause of the contradiction is that the owners think that the property "take money does

not work", the service quality is low. In view of this situation, Articles 1254,942 and 946 of the Civil Code make specific provisions on the scope of property liability and property service contract. On the one hand, they expand the scope of responsibility for property and increase relevant obligations; on the other hand, they also play a role in promoting the improvement of property service quality. Similarly, these also have various problems in practice.

This paper starts with the problems exposed in the process of property service, and focuses on the problem of property fees, the distribution of public property income, and the service quality of property service.

2. The Property Demand for Paying Property Fees

This problem should start from two aspects. On the one hand, the property shall be fulfilled in accordance with the relevant obligations stipulated in Chapter 24 of the Civil Code to avoid "falling control"; in practice, the property management should also strengthen the training of the business and legal knowledge of the staff to avoid the vacancy and "violent payment", and avoid further deterioration of the "owner" relationship. But at the same time, we should also warn the consequences of refusing to pay the property fees, which is facing the treatment of the relevant administrative departments, to do "rational, strong and grounded".

On the other hand, as the owner enjoying property service, they should pay the property fee, rather than using the so-called "exemption clause" arrears; "violent urge" and "reach" on some property should not blindly compromise and concession, but also improve the awareness and relevant basic legal knowledge, and dare to protect their legitimate rights and interests by using legal weapons.

On this issue, the owners 'assembly or owners' committee can also play its role of supervision and supervision, in addition to supervise the service quality of property, can also urge the owners property fee pay, do "supervision", "supervise" balance, make the property service better into a virtuous cycle, more conducive to balance the "owner" relationship.

3. Distribution of Public Property Income

In view of this problem, the "trust system" property management model which is being practiced and promoted in many places in Chengdu is worth for reference, that is, the owners set the property fees paid and the public income brought by the community window as trust property, and the owners 'assembly or the owners' committee as the trustor. This management mode with the property as the trustee, all the owners as the beneficiaries, and the property management according to the agreed standards and obtains the manager's remuneration has been well received. In this mode, the property management will publicize the public income through the community bulletin board and other channels, making the information transparent and easier for the owners to rest assured.

Coincidentally, Xi'an Shijia Xingcheng community once posted a notice: " Because the public area of the community income is surplus, each owner of the community can get a Baidu electricity."More practice is to use the common income for common expenditure, such as the maintenance of community public equipment, maintenance.Under the informed consent of all owners, the property company and industry authority reached an agreement, can be any form of division of common income.

In this regard, many of the provisions in the Multi-storey Buildings (Owners' Filing Group) Ordinance (hereinafter referred to as the Multi-storey Buildings Ordinance) reflect "solutions" and our "happen to coincide".for instance, The function of the Committee of Management in the Multistorey Building Ordinance is to execute all provisions in the public deed on behalf of the corporation, This content includes the hiring of the relevant management staff, And to give

them pay, Such as hiring an accountant to review the financial statements of the commission; Set up relevant accounts and accounting records, Preparation of the financial statements, And submitted to the annual general meeting of the delegation for review, And ready to consult to the owner or a professional authorized in writing by the owner These rules all reflect the "legislators" requirement for the transparency of information, It is also conducive to the owners to supervise the managers and understand the relevant situation of the normal expenses of the community, Thus building a bridge of trust between the owner and the manager.

4. Service Quality of Property Management

For this question, I think there are four entry points: property management, communities 'owners, owners' congresses or residents' committees and relevant regulatory agencies.

First of all, the property management itself should strengthen the technical and personal quality training of the property management service personnel, so as to achieve both "technology" and "quality". This is conducive to improve the property service experience of the community owners, and reduce the "incidence" of the contradiction of "property owner".

Secondly, as the community owners enjoying property services should also strengthen their own legal awareness and rights protection awareness, and at the same time should clarify their own "role" - -the served and supervisors. In this way, in the face of poor property service quality or other non-performance of the property service contract behavior, can timely report to the owners' assembly or the industry committee and the relevant regulatory departments. On the one hand, it can urge the property management to improve the quality of property services, and on the other hand, it is more conducive to safeguarding the legitimate rights and interests of the owners themselves.

Thirdly, although the owners 'assembly belongs to the private owners' autonomous organization, it also reports the specific situation of the implementation of the property management process, supervises whether the property performs the relevant obligations stipulated in the property service contract and understands the opinions and suggestions of the owners of the community. The owners 'meeting should give full play to its role as a "bridge". -- should face the owners' complaints, actively understand and give timely feedback, rather than choose such negative attitudes such as "muddle" or "ignore". This not only ensures that the reasonable demands of the owners can respond positively, but also alleviates the contradiction between "owners", which is conducive to the construction of a bridge of trust between "owners".

Finally, as the owner "last" relief means --relevant regulatory authorities, its importance is self-evident. Similarly, the regulatory authorities should perform their supervisory duties, and when necessary, they should take corresponding compulsory means to protect the legitimate rights and interests of the owners. At the same time, in the face of the owners' complaints, they should not be "irrelevant, high hanging", more should not "kick the ball", the supervision responsibility to other departments. Otherwise, it is not conducive to the solution of the problem, and will also discredit the image of the regulatory authorities.

5. Sum up

Although with the promulgation of the Civil Code, the "chaos" of the property industry has been improved, there are still various problems in practice, which cannot be ignored. The issues discussed in this article are just the tip of the iceberg, and there are more property service problems waiting to be solved. Moreover, the Civil Code is not omnipotent, and it itself has a lag, which requires us to explore such solutions as the "trust system" property management methods in practice to make up for the "legal loopholes".

As General Secretary Xi Jinping has pointed out, "The promulgation and implementation of the Civil Code does not mean that all problems in the civil rule of law have been solved once and for all. There are still many problems to be tested and explored in practice, and they need to be constantly matched, supplemented and refined. "In the era of the civil Code, we must adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, adhere to the people-centered development philosophy, earnestly study, implement and maintain the civil Code, improve residents' happiness index, and strive to build a more harmonious relationship between "owners".

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