

# Research on the Legal System of Idle Homestead Investment

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## Abstract

The shareholding system of idle homestead is related to the comprehensive promotion of homestead reform and rural revitalization strategy. The investment of idle homestead into companies or farmers' professional cooperatives is conducive to avoiding the idle homestead and the waste of resources, and increasing farmers' property income. At the same time, the pilot project in other places in China also provides useful experience for the investment of homestead. However, at present, there are still problems in the imperfect evaluation system, the risk of land loss and the share transfer after the investment. The above problems can be solved by building a systematic evaluation system, increasing the risk guarantee mechanism and allowing farmers to transfer shares under certain conditions.

## Keywords

Homestead; Buy a Share; System Construction.

## 1. Literature Review

In 2018, the central "file 1 file" will homestead "separation" system conception in the framework of rural revitalization strategy deployment, put forward actively explore homestead rational exit mechanism and utilization way, to implement the homestead collective ownership, safeguard the homestead farmers qualification and farmers housing property rights, moderate live homestead and farmers housing use right. In 2020, the first year of a new round of pilot homestead reform, the No.1 document of the central government pointed out that solid progress should be made in determining the confirmation, registration and certifying the right to use homestead, and further deepen the pilot reform of the rural homestead system. At present, our country rural idle homestead waste phenomenon is more serious, "a house" and excessive building phenomenon is widespread, relevant departments of homestead management power is weak, leading to the lack of effective exit mechanism, need in the homestead mortgage, lease, paid exit system on the basis of exploring the optimal system of idle homestead. Practice some places such as Puyang, yiwu has homestead in the pilot work, and form the corresponding pattern, however, for the idle homestead in evaluation mechanism, after equity exercise and risk prevention measures is not clear, for the specific system, idle homestead to buy system, specific structure.

## 2. The Necessity and Feasibility of Idle Homestead for Buying Shares

### 2.1. Avoid Leaving Idle Resources and Using Wasted Resources

As far as most villages and towns in China are concerned, idle homestead and rural housing have become a common phenomenon, the waste of homestead is prominent, and the phenomenon of "one house with more households" is widespread, resulting in the lack of effective exit mechanism of homestead. Take Liyang City in China as an example, most of the rural houses are in a long-term idle state, and most of them are still not revitalized. The reason is the lack of investment utilization as a perspective. Although around the practice of the exploration of idle homestead utilization, but mainly manifested in the overall optimization of

rural idle homestead, idle homestead circulation, leasing, entrusted, cooperative operation, etc., less through the use of idle homestead, to revitalize the use of rural idle homestead. The utilization and circulation mode of homestead is the focus of the reform of the homestead transfer system and the protection of farmers' property rights and interests. At present, we should deepen the utilization scope of idle homestead. In farmers have its house (house), on the basis of the existing idle homestead in companies, improve the level of idle homestead intensive utilization, exercise after the release of homestead use, can fully release the rural idle homestead property properties and market value, to expand and deepen the idle homestead use way, optimize the purpose of rural land use layout. Attention is paid to the use of idle homestead as shares, which reflects the practical needs of extending and increasing the channels of farmers' non-agricultural income, but also can reduce the idle rate of rural homestead and agricultural housing.

## **2.2. Increase Farmers' Property Income**

Site decentralization and scattered is not conducive to its systematic use, farmers alone to their own site transfer of homestead use rights tend to have low value, social main body to enter, lack of investment initiative and enthusiasm, it will greatly damage the enthusiasm of farmers to implement the three separation, ultimately is not conducive to the implementation of the rural revitalization strategy. And the cooperatives of taking homestead as shares can realize the large-scale use of land by formulating unified measures, which is conducive to increasing the economic value of homestead and promoting the increase of farmers' income. China reference to liyang rich assets professional cooperatives, according to the operation mode of the "cooperative + farmers", to the farmers idle farmhouse appraisal value investment, set up assets professional cooperatives, by farmers idle housing assets integration, build leisure tourism, vacation pension, entertainment camp, such as industry, cooperative unified management, in this way, farmers join cooperatives become "shareholders", not only have a fixed rent, at the end of the dividend, farmers can employment in the village, become a new type of farmers to earn wages.

## **2.3. Other Regions of China have Accumulated Practical Experience**

Now many regions in China have explored and piloted the system and model of homestead investment. In one of the "urban village" problem is the most prominent city --Shenzhen, for example, under the Shenzhen government attaches great importance to the villagers in homestead urban village reconstruction project and participate in the project profit distribution, namely let the villagers participate in the old reconstruction project, and the profit distribution to them, thus established a new mechanism of land benefit distribution, broke the villagers, village collective and participate in the reconstruction of old interests entanglement. Li Jinkui, director of the Urban Operation Research Center of the China Institute of Comprehensive Development, said that Shenzhen's move has solved the problem of the compensation ratio and provided a new reference for other cities in China to solve the problem of compensation and resettlement for urban villages. Many places in Shenzhen have implemented the method of homestead land and human stock, which has truly achieved a win-win situation between the city and the village, and unknowingly made the villagers' thinking and behavior realize urbanization. It not only turns the "village" into a "city" from the appearance, but also completely transforms the relationship between the villagers and the land into the relationship between shareholders and shares. This organizational form of modern enterprise will unconsciously realize the urbanization of the villagers' thinking and behavior of the villagers, which is a multi-win transformation method in the reconstruction of urban villages. Thus it can be seen that a bold attempt has appeared in the use right of homestead ownership in practice. What it needs to explore now is its theoretical framework to make it more standardized and bring greater benefits to farmers.

### **3. The System Dilemma of Idle Homestead Investment**

#### **3.1. The Value Evaluation System is not Sound**

According to Article 27 of the Company Law, the non-monetary property used as capital contribution shall be assessed, and shall not be overestimated or underestimated. The evaluation and pricing of non-monetary property is an important link for shareholders to invest and invest, which is related to the dividends of shareholders and the debt repayment of farmers' professional cooperatives. However, article 8 of the Regulations on the Management of Farmers' Professional Cooperatives and Article 38 of the Demonstration Constitution of Farmers' Professional Cooperatives stipulate that when the members contribute money with non-monetary property, all the members of the cooperative shall evaluate the invested property. All members may assess the amount of non-monetary property contribution of farmers' specialized cooperatives to determine the total amount of investment. This existing evaluation method lacks a relatively fair and objective evaluation standard, and also lacks the authority in evaluating the due homestead price, which is easy to underestimate the homestead price, which infringes the interests of farmers.

#### **3.2. There is a Risk of Land Loss for Farmers When Farmers' Specialized Cooperatives go Bankrupt**

One of the policy implications of buying idle homestead is to protect farmers' property rights and interests. As far as China is concerned, it is an important task to improve farmers' income, improving their living conditions and narrowing the income gap between urban and rural residents. Opening up restrictions on the right to use idle homestead can increase farmers' property rights and increase their property income. But there are also risks in the homestead investment. When the specialized farmers' cooperatives are poorly managed and face bankruptcy, according to the "Farmers' Professional Cooperatives Law and the Bankruptcy Law, farmers need to bear the responsibility with the right to use the invested homestead land. As long as farmers' specialized cooperatives are insolvent, farmers must bear the risk of losing the right to use the homestead and the ownership of the house. When the homestead enters the auction market, it may fall into the hands of the members of the non-collective economic organizations, which obviously runs counter to the social security function of the homestead and the function of maintaining the stability of the collective economic organizations. This will not only make the subject of the right to use the homestead break through the scope of the collective members, deviate from the essential nature of the collective land to guarantee the collective members, but also further weaken the collective ownership, and even lead to disguised privatization.

#### **3.3. The Circulation of the Shares Held by the Farmers after the Investment**

After the ownership of the right to use the homestead and the ownership of the house, the farmers became the shareholders of the farmers' professional cooperatives, in their hands Can the shares held be transferred, whether the object of the transfer is restricted, and can they be transferred to people other than the shareholders of farmer professional cooperatives? Will farmers lose the security of homestead and housing security through the transfer of shares? In doubtful, there is a need for further study.

### **4. Countermeasures of Idle Homestead Becoming a Shareholder**

#### **4.1. Establish a Standardized Evaluation System for Homestead Investment**

In order to establish a scientific and reasonable value evaluation system in the homestead investment system, the authoritative evaluation institutions and scientific evaluation methods are the key. In order to guarantee idle land and idle housing evaluation value fair and

reasonable, effectively promote the marketization of land use circulation, Suggestions in the existing land appraisal agency set up rural idle land evaluation team, recruit talents with professional knowledge and equipped with relevant positions, to carry out the relevant rural idle land evaluation work, pay attention to grasp the rural land system reform policy file spirit, to ensure that the evaluation results of objective and fair. In addition, in the evaluation method, to form a standard and convenient evaluation standards. Specific technical specifications should be determined according to the necessary requirements such as evaluation objects, land grade, evaluation procedures and evaluation time limit, and the land evaluation market should be guided to form a scientific and standardized evaluation mechanism, so that the evaluation work in various places can be followed. It is also necessary to adopt innovative and diversified evaluation methods, encourage the innovation of the evaluation methods of idle homestead, timely revise the evaluation standards and methods that do not meet the practical needs and imperfections, and constantly improve the evaluation system of idle homestead.

#### **4.2. Establish a Whole Set of Risk Prevention System**

First of all, we should determine the period of the time to use the right of the homestead to become shareholders, and make it clear that the farmers will buy 5 or 10 years. After the expiration of the period, the farmers should be given the free option to buy the right to use the homestead again, so as to prevent the risk of the homestead from being destroyed from the control of the farmers for a long time. Therefore, the reasonable definition of the right to use the homestead can help the investment shareholders to reduce the risk of destruction or loss of the homestead. Secondly, the introduction of various measures to restrict the actual circulation of homestead. After the farmers become the right to use the homestead into the shareholders of the organization, the homestead becomes its property, and the organization enjoys the right to possess, use and dispose of it. However, the welfare distribution of homestead is used free and indefinitely, which shoulders the mission of ensuring the living needs of farmers' land and maintaining the stability of collective economic organizations. Therefore, it is necessary to restrict the right of specialized farmer cooperatives to dispose of the homestead through various measures and reduce the risk of land loss of invested farmers. In addition, the villagers' committee or the collective economic organization shall make a written record on the ownership of the use right of the homestead, strictly supervise the use of the homestead, and the transfer or the improper use of the homestead shall be stopped in time to reduce the losses. Finally, commercial insurance institutions are encouraged to develop insurance products that meet the needs of the right to use homestead. Insurance can disperse the risk of losing land of farmers, when the insurance accident that the insurance contract agrees occurs, the insurance company assumes the liability for compensation. In addition, the government and equity investment organizations can set up a homestead equity risk fund to effectively control the risk of farmers' equity investment.

#### **4.3. Clarifying the Circulation of the Shares Held by the Farmers**

Whether the shares held by farmers can be transferred is the first problem to be solved after the idle homestead becomes a shareholder. Article 71 of the Company Law stipulates that shareholders have the freedom to transfer equity within the limited liability company, and the transfer of equity to people other than shareholders shall be agreed upon by more than half of other shareholders. In addition, the joint-stock company pursues the principle of free transfer of shares, internal and external transfer, no restrictions to the transferee. Following this regulation, farmers with homestead shares, based on the principle of free transfer of shares, should be able to transfer the shares held by them. Farmers who transfer their shares does not mean that they will lose their homestead and housing security. As mentioned above, farmers can buy into the use right of homestead for a certain period of time. Before the expiration, if farmers are unwilling to continue as members of farmer professional cooperatives for some

reasons, they can transfer the remaining investment period to other farmer members to obtain a certain amount of currency. After the expiration of the investment period, the right to use the homestead has returned to the farmers. In this way, farmers will not lose their housing security because of the loss of homestead, nor will there be the loss of homestead, which will damage the interests of collective economic organizations.

As mentioned above, the right to use the homestead will return to the invested farmers after the right to use the homestead expires. Therefore, there should not be too many restrictions on the object of farmers transferring their shares. They can be other members of the organization or other members of society. According to paragraph 3 of Article 71 of the Company Law, the equity transferred with the consent of the shareholders has the preemptive right of other shareholders under the same conditions. In view of this, the other shareholders shall have the preemptive right. Since the transfer of farmers' shares is not equal to the transfer of the homestead, it is not necessary to consider the preemptive right of the members of the collective economic organization. However, when the specialized farmer's cooperatives go bankrupt and the right to use the homestead is auctioned, the members of the collective economic organizations should be given the priority right to purchase, so as to prevent the outflow of the homestead.

## 5. Epilogue

To prudently and prudently deepen the reform of the rural homestead system, and to carry out the use of idle rural homestead as shares, is the due meaning of the central government to implement the channels for guaranteeing farmers' property income. Based on the background of rural land system reform and the implementation of rural revitalization strategy in the new era, to enrich the utilization mode of idle homestead and exert the power of the right to use the homestead, the focus and core is to clarify the optimal utilization mode of idle homestead and the construction of system norms. The active use of idle rural homestead by means of investment is conducive to encouraging and innovating the utilization way and mechanism of idle homestead, improving the living environment and rural ecological civilization, and has a positive role and important significance in realizing the efficient utilization of idle homestead and the all-round revitalization of rural areas.

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## References

- [1] Chen Xiaojun: The system dilemma and the solving dimension of the homestead use right, *Legal Studies*, 2019 (3),p.48-72.
- [2] Chen Xiaojun: Thoughts on the Rule of Law of Agricultural Land System Reform in China, *Zhongzhou Academic Journal*, 2019 (1),p.56-65.
- [3] Ding Guanliang: Legal obstacles and countermeasures of the separation of homestead rights in farmers' cooperatives, *Journal of Tianjin University of Commerce*, 2020 (2),p.3-15.
- [4] Dong Xinhui: Transfer of homestead use right in 70 years of New China: institutional change, practical dilemma and reform direction, *Rural Economy in China*, 2019 (6),p.2-27.
- [5] Gao Shengping: The legal logic of the pilot reform of the homestead system, *Journal of Yantai University (Philosophy and Social Sciences edition)*, 2015 (5),p.23-36.

- [6] Gao Shengping: Rural homestead system: from control, empowerment to revitalization ,Agricultural Economic Problems, 2019 (1),p.60-72.
- [7] Gao Shengping:The Evolution and Trend of the Homestead System Reform Policy ,Journal of Renmin University of China, 2019 (1),p.23-33.
- [8] Gaohai: On the withdrawal of collective land "three rights" after farmers settle down in cities, Chinese Law, 2020 (2),p.30-47.
- [9] Gaohai: takes the "Deqing Method" as the main analysis sample ,Modern Law, 2020 (5),p.112-125.
- [10] Gaohai:The method of "separation of three rights" of homestead realizes ,The Jurist, 2019 (4),p.132-144.
- [11] Han Lida, Wang Yanxi, Han Dong:The nature and realization form of the three rights of rural homestead, Agricultural Economic Problems, 2018 (7),p.36-45.
- [12] Han Song:Homestead legislative policy and reform of homestead use right system ,Legal Studies, 2019 (6),p.70-92.