

# Research on the Protection of the Rights and Interests of Low- and Middle-rise Owners of Elevators Installed in Old Residences

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## Abstract

The installation of elevators in old residential buildings is a project to benefit the people, but due to the conflict of interests between high-rise and low-rise owners, a large number of disputes have arisen. In judicial practice, courts often ignore the protection of the rights and interests of low-rise owners. In order to safeguard the legitimate rights and interests of low-rise owners, the right to know of low-rise owners should be protected, the installation plan should be scientifically designed, and a reasonable compensation plan should be formulated based on the principle of fairness in combination with the infringement of the adjacent rights of low-rise residents by installing elevators.

## Keywords

Installation of Elevators; Adjacency Relationship; The Principle of Fairness; Owner Autonomy.

## 1. Introduction

With the continuous development of social economy, people's demand for living environment is also increasing. Affected by objective conditions, many old residential areas in cities and towns have not installed elevators, which greatly affects people's travel convenience. In recent years, in order to protect the rights and interests of the elderly and the disabled, and improve the quality of life of residents, the state encourages the installation of elevators in old communities. On June 28, 2023, the Law of the People's Republic of China on the Construction of a Barrier-free Environment was passed, Article 22 of the law stipulates that "the state supports the installation of elevators or other barrier-free facilities in existing multi-storey residential buildings in old urban communities to provide convenience for the disabled and the elderly." Article 278 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") stipulates the installation of elevators, according to which the reconstruction and reconstruction of buildings and their ancillary facilities shall be voted on by the owners of the exclusive part of the area accounting for more than 2/3 and the number of owners accounting for more than 2/3, and by the consent of the owners participating in the voting of the exclusive part and the number of people participating in the voting accounting for more than 3/4. Compared with the provisions of Article 76 of the Property Law of the People's Republic of China (hereinafter referred to as the "Property Law"), the Civil Code reduces the requirements for the owners to vote and pass, making it easier to install elevators in old residential areas. The installation of elevators in old residences facilitates the travel of high-rise residents, improves their quality of life, improves their quality of life, and also promotes the appreciation of their properties. However, while installing elevators in old residences to facilitate high-rise residents, the protection of the rights and interests of low-rise residents is also worth considering.

## 2. Handling of Disputes Over the Installation of Elevators in Judicial Practice

The installation of elevators in old residential areas is an important project to benefit the people, which is of great significance for promoting the construction of a barrier-free environment and adapting to the needs of an aging society. In practice, it is often the high-rise users who actively promote the installation of elevators, while the low-rise users oppose it. The main reason for the opposition is that after the installation of elevators, the originally poor high-rise has become the best floor, and the low-rise has been relatively depreciated. The Law of the People's Republic of China on the Construction of a Barrier-free Environment stipulates that "the owner of a house shall carry forward the traditional virtues of the Chinese nation, such as being kind to one's neighbors and helping each other, strengthen communication and consultation, and cooperate with the existing multi-storey residential buildings to install elevators or other barrier-free facilities in accordance with the law." "After communication and negotiation fail, the opposing party can resolve the issue through litigation. The installation of elevators in old residential buildings has caused damage to the rights and interests of low-rise owners, and the court shall comprehensively consider various factors when adjudicating, coordinate the conflicts of all parties, and safeguard the legitimate rights and interests of the owners. However, in judicial practice, the opposing owner is likely to face an unfair outcome in a lawsuit arising from the installation of elevators in old residences.

In disputes over the installation of elevators in old residential buildings, the main focus of the dispute is whether the installation of elevators will affect the rights and interests of low-rise residents such as ventilation and lighting, and whether it will cause damage to the rental and sale value of low-rise houses. Regarding the court's rulings, they can be divided into the following four categories.

First, low-rise residents should provide necessary cooperation with the installation of elevators. In some judgments, the courts, from the perspective of convenience and benefit, held that the installation of elevators for existing residences is a practical project to benefit the people to adapt to social and economic development and meet the needs of the aging population, and the owners involved in the case should cooperate. For example, the Intermediate People's Court of Dalian City, Liaoning Province, held in a judgment that "in compliance with relevant laws and regulations, the owners involved in the case should properly handle adjacent matters such as the installation of elevators in accordance with the elevators in accordance with the principles of convenience of life, solidarity and mutual assistance, fairness and reasonableness, and give necessary cooperation to the installation of elevators." From the perspective of installing elevators to facilitate the travel of high-rise residents, some courts held that "elevators were not installed before, and it was inconvenient for residents of three floors and above to travel, especially for people who are older or have inconvenient legs." "It is reasonable and justified for the plaintiff to request the addition of elevators for the convenience of travel and to improve the quality of living."

Second, the court recognized that the installation of elevators would have an impact on the ventilation and lighting of low-rise residents, but this was within the scope of the adjacent tolerance obligations of low-rise residents, so it did not support their claims. Some courts held that although the installation of elevators would have an impact on the adjacent rights and interests of low-rise residents, the act of installing elevators was lawfully unaffected. For example, the Intermediate People's Court of Qingdao City, Shandong Province, wrote in a judgment, "From the perspective of the consequences of the installation of elevators, although it may have a certain impact on the rights and interests of the residents on the first floor, such as ventilation, lighting, heating, etc., the impact has been studied and analyzed by the relevant units of the elevator installation, and the building involved in the case has the conditions for

installing elevators." "Even if the installation of elevators affects low-rise residents, low-rise residents should be appropriately tolerated. For example, the Intermediate People's Court of Meizhou City, Guangdong Province, held in a judgment that the installation of elevators would facilitate the travel of high-rise residents and increase the value of their houses, and also recognized that the installation of elevators may have a certain impact on low-rise residents. However, "if the appellant fails to adduce evidence to prove that the act of installing the elevator at issue is procedurally illegal and endangers the safety of the building, he should also give necessary convenience and tolerance to the legitimate interests of the vast majority of the owners of the building in line with the concept of neighborly mutual assistance, harmony and friendship." From the perspective of weighing the pros and cons, some courts held that the installation of elevators did not cause damage to low-rise residents, "The installation of elevators in old residential buildings is an addition to the original design, which will have a certain adverse impact on some of the original residences." However, the installation of elevators can improve the livable level, convenient for the life of most residents, after the installation of elevators, the appreciation of high-floor housing prices in fact has a positive effect, is the benefit of more than the disadvantage. "

Third, the court held that the installation of elevators would have an impact on the ventilation and lighting of low-rise residences, and that high-rise residents should compensate low-rise residents. In the case of Zou Mingyou, Liang Yongyi and others, the court of second instance held that the installation of elevators would cause noise and adversely affect the lighting and ventilation of the houses on the first floor, and the court accepted the claims of the residents on the first floor that the installation of elevators would depreciate the value of their houses. In the case of Chen Jiyu, Yan Qianheng and other adjacent relationship disputes, the court recognized that the installation of elevators would facilitate the travel of residents and increase the value of the house, "but the installation of elevators and corridors blocked the original stairwell of the building, affectin original stairwell of the building, affecting the ventilation and lighting of Room 303 involved in the case, and according to the principle of fairness and reasonableness, the residents who participated in the fundraising for the construction of the elevator should make corresponding compensation to the 303 households." In a judgment, the Intermediate People's Court of Foshan City, Guangdong Province, held that the opposing residents should make necessary toleration for the adverse effects of the reduced comfort caused by the installation of elevators, and that "other residents of the building involved in the case who agree to install elevators should take the initiative to compensate or compensate the residents who do not agree to the installation of elevators and whose rights and interests are damaged, based on the actual situation of each resident, so as to maintain the social harmony of all residents in the residential area of the building involved in the case." For example, in the above-mentioned case, the court ordered the residents who agreed to install the elevator to compensate the opposing households 2,000 yuan respectively according to the location of the elevator and the degree of impact on the sunshine and lighting of the opposing households.

Fourth, the court held that the installation of the elevator was illegal and supported the claim against the owner. In the dispute over the installation of elevators, the focus of the dispute is mainly on whether the installation of elevators is legal and whether it will infringe on the adjacent rights of opposing residents. For example, the Intermediate People's Court of Lanzhou City, Gansu Province, wrote in a judgment that "Chang'an Company's act of modifying the elevator in the stairwell adjacent to the east side of the house purchased by Chen Qijun and Liao Yanping did not have the consent of the owners of the exclusive part accounting for more than two-thirds of the total area of the building and accounting for more than two-thirds of the total number of owners, which is unauthorized construction, and Chen Qijun and Liao Yanping did not have the consent of the owners of the exclusive part accounting for more than two-thirds of the total area of the building and accounting for more than two-thirds of the total number of

owners, which is unauthorized construction, and Chen Qijun and Liao Yanping have the right to demand that Chang'an Company stop infringing." In addition, from the perspective that the installation of elevators will cause potential safety hazards, the court held that "if the installation of elevators causes potential safety hazards in its house, the Appellee must actively eliminate the nuisance to the Appellant and eliminate the danger, so that the Appellant's building structure can be restored to the original safety level."

### **3. The Theoretical Basis for Protecting the Legitimate Rights and Interests of Low-rise Residents**

#### **3.1. Interference with the Neighbouring Rights of Low-rise Residents**

The adjacency of real estate includes the relationship between adjacent traffic, adjacent water and drainage, adjacent construction and repair of buildings and laying of pipelines, adjacent land boundary, adjacent ventilation, lighting and sunshine, and adjacent environmental protection. From the above cases, it can be seen that in practice, many low-rise residents believe that the installation of elevators will affect the ventilation and lighting of their residences, so they file lawsuits. Article 293 of the Civil Code stipulates that "the construction of buildings shall not violate the relevant national engineering construction standards, and shall not obstruct the ventilation, lighting and sunshine of adjacent buildings." In the above-mentioned cases, the court held that the implementation procedures of the elevator installation project were lawful, and that the relevant housing and urban construction bureau had obtained the permission of the relevant housing and urban construction bureau, and obtained the construction permit of the construction project, so as to recognize the act of installing the elevator. However, merely complying with the relevant national engineering construction standards cannot settle the adjacent lighting and ventilation disputes, and merely complying with the construction engineering standards may not be able to provide sufficient protection to the adjacent lighting and ventilation interests. Since the installation of elevators on old residential buildings is not part of the residential construction plan, once completed, it will change the existing pattern of real estate domination, continue to obstruct the lighting, sunlight and ventilation of low-rise residences, and make the ownership of low-rise residential buildings fall into an unsatisfactory state, which should be a nuisance. As a fait accompli, the pattern of domination of adjacent real estate formed in history should be respected in principle and must not be changed without authorization. High-rise residents actively request the installation of elevators for the convenience of travel, which adversely affects the lighting, sunshine and ventilation that low-rise residents can enjoy, and high-rise owners should provide compensation.

#### **3.2. The Principle of Fairness**

The principle of fairness is one of the basic principles of civil law, which means that in a civil legal relationship, the allocation of rights and obligations between the parties in the transaction results should be balanced in terms of interests. In the process of installing elevators in old residences, high-rise residents often get access convenience and housing value-added, and most of all high-rise residents will support the addition of elevators. For low-rise residents, the installation of elevators will occupy rare public space, and will also affect the ventilation and lighting of low-rise residences, so low-rise residents often oppose the installation of elevators. Article 288 of the Civil Code stipulates that: "The owner of adjacent rights to immovable property shall correctly handle the adjacent relationship in accordance with the principles of conducive to production, convenience of life, solidarity and mutual assistance, fairness and reasonableness." In practice, the court will recognize the installation of elevators on the basis of the principle that the installation of elevators is in line with the principle of "conducive to production and convenient life", but if high-rise residents are benefited by the installation of

elevators, and low-rise residents are damaged by the installation of elevators, low-rise residents can also request compensation from high-rise residents on the basis of the principle of "fairness and reasonableness".

## **4. Improvement of the Protection Mechanism for the Rights and Interests of Low-rise Residents**

### **4.1. Conduct Lawful Voting Procedures**

The Civil Code has amended the voting rules in Article 76 of the Property Law, and various localities have also amended the voting rules in accordance with the Civil Code. For example, in order to promote the process of installing elevators in existing multi-storey residential buildings, according to the relevant provisions of the Civil Code, from January 1, 2021, the proportion of voting by owners of the installation of elevators will be adjusted to require the participation of more than two-thirds of the owners of the door of the building and the consent of more than three-fourths of the owners participating in the voting. In addition, in practice, there are situations where high-rise residents bypass low-rise residents to vote on their own, so that low-rise residents only know about the construction of elevators when they are built, which causes great resistance from low-rise residents. This violates the right to know of low-rise residents and violates democratic principles. In order to protect the right to know of the residents on the ground floor, many places have stipulated the publicity method for the installation of elevators. For example, Article 12 of the Administrative Measures for the Installation of Elevators in Old Residential Communities in Hangzhou City; "Upon written submission by the applicant, the local community residents' committee shall publicize the agreement and preliminary plan of the elevator installation project in the old residential area for ten days in a conspicuous position such as the entrance of the unit building and the community public notice board where the elevator is to be installed." In order to protect the legitimate rights and interests of low-rise owners, the voting procedure should be open and transparent. Before the start of voting, the owners of the proposed elevator residential buildings should be informed of the elevator installation at the unit entrance of the residential unit to be installed, the community bulletin board, the owner's WeChat group, etc., to ensure the right to know of the low-rise owners. During the voting process, the owner should be clearly informed of the construction unit, construction time, and fund allocation of the elevator installation, and negotiate the compensation plan for the low-rise owners. During the voting process, credible third parties, such as grassroots neighborhoods and property committees, are invited to participate in residents' negotiations to help coordinate the interests of all parties. After the vote, the proof materials of the owner of the building agreeing to the installation of the elevator and the design and construction drawings of the elevator installation of the building shall be publicized, and the publicity period and the expression of objections shall be clarified.

### **4.2. Design a Scientific Installation Plan**

In the dispute over the installation of elevators in old residential areas, the main reason for the opposition of low-rise residents is that they occupy the original common space, affecting ventilation and lighting. In the early stage of formulating the elevator installation plan, it is necessary to maintain close contact with the masses, carry out research, listen to the opinions of residents, and understand the needs of residents. The community should increase the policy publicity of the installation of elevators, deepen the understanding of residents about the installation of elevators, and accelerate the installation of elevators in old communities. The elevator installation plan should consider the original situation of the community, and reduce the impact on the ventilation and lighting of low-rise residents as much as possible. In addition,



because low-rise residential buildings often face the problem of water pipe blockage, the low-rise water pipes can be maintained when the elevator is installed, so that the low-rise residents can also enjoy the convenience brought by the installation of elevators, so as to achieve a win-win situation.

### 4.3. Establish a Reasonable Compensation Mechanism

After the installation of elevators in old houses, the lighting and ventilation of low-rise residents will be affected, resulting in the depreciation of the value of houses. Some scholars have proposed that the compensation given by the high-rise owner to the infringed owner of the low-rise is equivalent to spending money to purchase the rights of a part of the low-rise owner. It is also proposed to use the total value added of high-rise houses to subtract the total depreciation of houses and divide them by the total number of households to determine the amount of compensation to low-rise households. In judicial practice, the court usually determines the amount of compensation based on the degree to which the installation of elevators has an impact on the sunlight and lighting of the residents' houses. For example, in the case (2021) Yue 06 Min Zhong No. 263, the court ordered the households who agreed to install the elevators to compensate the opposing households with 2,000 yuan respectively based on the location of the elevator installation and the degree of impact on the sunshine and lighting of the opposing households. However, it is often the case that the higher floors benefit more from the installation of elevators, but the court ignored the differences in the benefits of the residents on different floors and ruled that the supporting residents of different floors should give the same amount of compensation to the residents of the lower floors. When determining the amount of compensation, a judgment should be made in accordance with the principle of fairness, taking into account the location of the additional elevator and the impact on the ventilation, lighting and passage of low-rise residents. At the same time, it is advisable to determine the stepped compensation scheme according to the benefits of different floors after the installation of elevators.

## 5. Conclusion

The installation of elevators in old communities is not only an important measure to promote the transformation and construction of adapting to social aging, but also a popular project that the society is highly concerned about. However, due to the conflict of interests between the high-rise and low-rise residents, disputes continue in practice. In judicial practice, courts tend to focus on safeguarding the interests of high-rise residents and ignoring the losses suffered by low-rise residents. In order to safeguard the legitimate rights and interests of low-rise residents, this paper suggests that legal voting procedures should be implemented, and the role of third parties such as grassroots streets and neighborhood committees should be brought into play, a scientific installation plan should be designed, and a reasonable compensation plan should be determined according to the principle of fairness.

## References

- [1] YUAN Shuguang. Sociological analysis of elevator method for existing residences: Journal of Jinan University(Social Sciences), Vol. 28 (2018) No 3, p 99-104.
- [2] SONG Weizhe. The dilemma, criticism and countermeasures of installing elevators in existing residences: Hebei Law Science, Vol. 40 (2022) No 9, p 159-184.
- [3] LIU Changxing. Green Interpretation of Neighboring Rights Norms in China: A Case Study of Adjacent Lighting: Politics and Law, Vol. 305 (2020) No 10, p 108-118.
- [4] HUANG Takiichi. Civil law doctrinal analysis of adding elevators to existing residences: Research on local legislation, Vol. 7 (2022) No 6, p 72-89.

- [5] ZENG Yaolin, LI Yaxi. Improvement of the voting rights rules of owners when adding elevators to existing residences: *People's Justice*, Vol. 975 (2022) No 28, p 32-37.
- [6] Qu Shumeng. Research on the dilemma of quasi-public goods supply and its countermeasures from the perspective of game theory: A case study of the installation of elevators in old residential areas: *Western Academic Journal*, Vol. 144 (2021) No 15, p 146-149.
- [7] TANG Hai. Economic theory and analysis of fee collection and compensation in the installation of elevators in old residential areas: *China Market*, Vol. 1089 (2021) No 26, p 62-63.
- [8] TAN Qiping: *Chinese Civil Law* (Law Press, China 2018).
- [9] Civil Judgment of Dalian Intermediate People's Court of Liaoning Province (2023) Liao 02 Min Zhong No. 3344.
- [10] Civil Judgment of Lanzhou Intermediate People's Court of Gansu Province (2022) Gan 01 Min Chu No. 373.
- [11] Civil Judgment of Qingdao Intermediate People's Court of Shandong Province (2022) Lu 02 Min Zhong No. 9423.
- [12] Civil Judgment of Meizhou Intermediate People's Court of Guangdong Province (2022) Yue 14 Min Zhong No. 1480.
- [13] Civil Judgment of Wuzhou Intermediate People's Court of Guangxi Zhuang Autonomous Region (2022) Gui 04 Min Zhong No. 346.
- [14] Civil Judgment of Dalian Intermediate People's Court of Liaoning Province (2023) Liao 02 Min Zhong No. 3344.
- [15] Guangzhou Intermediate People's Court of Guangdong Province (2021) Yue 01 Min Zhong No. 27287.
- [16] Intermediate People's Court of Foshan City, Guangdong Province (2021) Yue 06 Min Zhong No. 263.
- [17] Intermediate People's Court of Lanzhou City, Gansu Province (2021) Gan 01 Min Zhong No. 296.
- [18] Intermediate People's Court of Qingdao City, Shandong Province (2021) Lu 02 Min Zhong No. 8312.