

China: Real Property Law

October 2014
Revised March 2015



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SUMMARY Individuals cannot privately own land in China but may obtain transferrable land-use rights for a number of years for a fee. Currently, the maximum term for urban land-use rights granted for residential purposes is seventy years. In addition, individuals can privately own residential houses and apartments on the land (“home ownership”), although not the land on which the buildings are situated.

Real estate may be transferred through sale, gift, or other legal means. When real estate is transferred, the land-use rights and home ownership are transferred simultaneously. Restrictions that may apply to the transfer of real estate include prohibiting transfer when the land-use rights are reclaimed by the state in accordance with law, or when the property has not been properly registered and certificates of ownership have not been obtained.

Both urban land-use rights and home ownership are subject to registration. The registration is performed by local authorities at or above the county level; certificates are issued to confirm the rights and ownership.

I. Introduction

This report provides information on the real property law of China. The questions addressed include whether individuals have a right to privately own and sell real property in China—specifically, whether a private individual can own a house and/or the land on which the house is situated and, if so, whether the private owner can sell or otherwise alienate his or her interest in the real property without restriction.

II. Legislative Framework

A. The Constitution

The Constitution of the People’s Republic of China (PRC or China) provides for the protection of private property.¹ Article 13 of the Constitution provides that “[c]itizens’ lawful private property is inviolable. The state, in accordance with law, protects the rights of citizens to private property and to its inheritance.”²

The current Constitution, which was adopted in 1982, has been amended four times—in 1988, 1993, 1999, and 2004.³ The 2004 amendment contained the Constitution’s first clear recognition

¹ XIAN FA (1982) (P.R.C.), XINBIAN ZHONGHUA RENMIN GONGHEGUO CHANGYONG FALÜ FAGUI QUANSHU (2014) (hereinafter FAGUI QUANSHU) 1, English translation *available at* Westlaw China (by subscription).

² *Id.* art. 13.

³ *Id.*

of the “private” nature of such property and its constitutional “inviolability,” although prior to the 2004 amendment the Constitution had provided protection for “the right of citizens to own lawfully earned income, savings, houses and other lawful property.”⁴

B. The Property Rights Law

The PRC Property Rights Law (Wuquan Fa, also translated as the Law on Rights *In Rem*) was first enacted on March 16, 2007, following legislative debates that had lasted for over a decade.⁵ Effective from October 1, 2007, this comprehensive legislation on property with nineteen chapters and 247 articles establishes a framework of property rights protection, including protection for movable property and real estate (immovable property).⁶ The Law addresses the establishment, alteration, transfer, and elimination of property-related ownership rights, and the registration and delivery of movable and real property rights.⁷

According to the Property Rights Law, the establishment, alteration, transfer, and elimination of real property rights must be registered, unless otherwise provided by law.⁸ State-owned natural resources are exempt from registration.⁹

C. Laws on Real Property in Urban Areas

In addition to the Property Rights Law, China regulates real property through a series of other laws and regulations, including the PRC Law on Land Management,¹⁰ the Land Registration Measures,¹¹ the Interim Regulations Concerning the Assignment and Transfer of the Right to Use State-Owned Land in Urban Areas (Assignment Regulations),¹² and the PRC Law on the Administration of Urban Real Estate (Urban Real Estate Law).¹³ Among these laws and regulations, the Assignment Regulations and the Urban Real Estate Law primarily regulate land-

⁴ Amendment to Constitution (2004) art. 22, 2004 THE LAWS OF THE PEOPLE’S REPUBLIC OF CHINA (P.R.C. LAWS) 56.

⁵ Wuquan Fa [Property Rights Law] (promulgated by the National People’s Congress (NPC), Mar. 16, 2007, effective Oct. 1, 2007), FAGUI QUANSHU 2-12 (Property Rights Law), English translation *available at* Westlaw China; JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 374 (Martinus Nijhoff Publishers 2008).

⁶ *Id.*

⁷ *Id.*

⁸ Property Rights Law art. 9.

⁹ *Id.*

¹⁰ Tudi Guanli Fa [Law on Land Management] (promulgated by the NPC Standing Committee, June 25, 1986, revised Aug. 28, 2004), Westlaw China.

¹¹ Tudi Dengji Banfa [Land Registration Measures] (promulgated by the Ministry of Land and Resources, Dec. 30, 2007, effective Feb. 1, 2008), Westlaw China.

¹² Chengzhen Guoyou Tudi Shiyong Quan Churang He Zhuanrang Zanxing Tiaoli [Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of State-Owned Land in Urban Areas] (Decree No. 55 of the State Council, May 19, 1990) (Assignment Regulations), Westlaw China.

¹³ Chengshi Fangdichan Guanli Fa [Law on the Administration of Urban Real Estate] (promulgated by the NPC Standing Committee, Aug. 30, 2007), FAGUI QUANSHU 3-370 (Urban Real Estate Law), English translation *available at* Westlaw China.

use rights and ownership of residential property in urban areas. Urban residential land has always been regulated differently from residential land in rural areas,¹⁴ which is not discussed in this report.

The Assignment Regulations were promulgated in 1990 by the State Council, which regulates the assignment and transfer of land-use rights in urban areas.¹⁵ The Urban Real Estate Law, which was enacted on August 30, 2007, addresses issues of real property in urban areas, including the transfer of land-use rights, real estate development, the sale of real estate, and real estate registration.¹⁶

III. Ownership of Land and Houses

A. Land-Use Rights

According to the Constitution and the land laws, Chinese individuals cannot privately own land and natural resources. The Constitution provides that land in urban areas must be owned by the state, whereas land in rural and suburban areas must be owned by the state or by local collectives.¹⁷

Individuals can, however, obtain the right to use land from the state. The land-use right under the Property Rights Law is a “usufructuary right” that allows the right-holder, the usufructuary, to legally possess, use, and benefit from property owned by another.¹⁸

In urban areas, the state grants (*churang*, sometimes also translated as “assigns”) or allocates (*huabo*) land-use rights to land users. For granted land-use rights, land users pay the state granting fees for a certain number of years.¹⁹ The State Council is authorized by law to formulate the maximum periods for which land-use rights may be granted.²⁰ Land-use rights may also be allocated for such purposes as government or military use, and urban infrastructure or public utilities use, for which the land users pay no fee or only compensation or resettlement expenses.²¹ There are normally no limitations on the length of time for which land-use rights can be allocated.²²

¹⁴ CHEN, *supra* note 5, at 385.

¹⁵ Assignment Regulations, *supra* note 12.

¹⁶ Urban Real Estate Law, FAGUI QUANSHU 3-370.

¹⁷ XIAN FA art. 10.

¹⁸ Property Rights Law art. 117.

¹⁹ Urban Real Estate Law art. 8.

²⁰ *Id.* art. 14.

²¹ *Id.* arts. 23, 24.

²² *Id.* art. 23.

B. Terms for Land-Use Rights

Under the current rules prescribed by the State Council, land may be used for residential purposes for up to seventy years; for industrial purposes for fifty years; for education, science, culture, public health, and physical education purposes for fifty years; and for commercial, tourist, and recreational purposes for forty years.²³

According to the 2007 Property Rights Law, when the term for the right to use land for residential purposes expires, the term will be automatically renewed.²⁴ The law does not make it clear, however, whether the state would charge another granting fee at the time of renewal or how the fee would be determined.

C. Private Home Ownership

Individuals can privately own real estate, including residential houses and apartments (i.e., buildings and structures on the land), although not the land on which the houses and apartments are situated. Article 64 of the Property Rights Law provides that “[i]ndividuals are entitled to enjoy ownership of such immovable and movable properties as their lawful incomes, houses,^[25] articles for daily use, tools of production, and raw materials.”²⁶

IV. Sale of Privately Owned Real Property

The Assignment Regulations provide that land users may transfer their land-use rights to others through sale, exchange, or gift.²⁷ Additionally, the Urban Real Estate Law provides that real estate may be transferred, mortgaged, or leased.²⁸ Real estate is transferred by sale, gift, or other legal means.²⁹ When real estate is transferred, the land-use rights and home ownership are transferred simultaneously.³⁰

Restrictions on the sale of real property are established by law. For example, if the transfer of the land-use rights is priced substantially lower than the market price, the government has the preemptive right to purchase the rights.³¹ The Urban Real Estate Law defines situations under which the transfer of real property is prohibited, including when

²³ Assignment Regulations, *supra* note 12, art. 12.

²⁴ Property Rights Law art. 149.

²⁵ *Fang wu*, which may be better translated as “apartment,” as most residential real property in urban China consists of apartments rather than single-family houses.

²⁶ Property Rights Law art. 64.

²⁷ Assignment Regulations, *supra* note 12, art. 19.

²⁸ Urban Real Estate Law art. 2.

²⁹ *Id.* art. 37.

³⁰ *Id.* art. 32.

³¹ Assignment Regulations, *supra* note 12, art. 26.

- the granted land-use rights were obtained by means that fail to meet the conditions of a proper grant;
- the real estate-related rights are frozen or otherwise restricted by the judicial or administrative authorities;
- the land-use rights are reclaimed by the state in accordance with law;
- the ownership of the property is under dispute; or
- the property has not been properly registered and certificates of ownership have not been obtained.³²

It is also worth noting that in transferring real estate, including the land-use rights and the home ownership, the new owner obtains the land-use rights only for the period equivalent to the original assigned term minus the number of years the original owner has used the land. Although the 2007 Property Rights Law provides for automatic renewal of the term of the rights to use land for residential purposes, such relevant issues as the amount of the new granting fee, if any, and procedure for renewal remain unclear.

V. Official Registry of Land-Use Rights and Home Ownership³³

The Property Rights Law provides that registration of real property must be performed by the registration authorities at the place where the property is located.³⁴ To be specific, the Urban Real Estate Law provides that land-use rights must be registered with local government land authorities at or above the county level, who issue certificates of land-use rights (*tudi shiyong quan zhengshu*) to affirm these rights. Home ownership must be registered with local government housing authorities at or above the county level, who issue certificates of home ownership (*fangwu suoyouquan zhengshu*) to affirm the ownership.³⁵

When real property is transferred, the change of ownership must be registered with the housing authorities; when the certification of home ownership is modified, the modification of the land-use rights must be registered with the land authorities, who issue a new or modified certificate of land-use rights.³⁶

Provincial governments may order one agency within the local government at or above the county level to conduct the registration of both land-use rights and home ownership, and that

³² Urban Real Estate Law art. 38.

³³ Following the completion of this report, detailed rules regarding real estate registration, the Interim Regulations on Real Estate Registration, were published by the State Council on November 24, 2014, with an effective date of March 1, 2015. *China Issues Real Estate Registration Rules*, XINHUANET (Dec. 22, 2014), http://news.xinhuanet.com/english/china/2014-12/22/c_133870891.htm.

³⁴ Property Rights Law art. 10.

³⁵ Urban Real Estate Law art. 61.

³⁶ *Id.*

agency may then issue a real estate certificate (*fang di chan quan zheng shu*) confirming both the land-use rights and the home ownership.³⁷

³⁷ *Id.* art. 63.