

Pre-registration system in Chinese property law

Description

1. Provision in the law

On October 1, 2007, the Property Law of China comes into effect, a landmark event in China's legislation history and in the cause of establishing rule of law in China.

Among those shining points in this new law, I single out and introduce the pre-registration system for your reference.

Article 20 of the Property Law provides:

“The parties to an agreement in regard of sale and purchase of buildings or of other interests in real property, may, as agreed, apply for the pre-registration with the registry agent with a view to safeguarding the realization of their real rights in the future. Upon pre-registration, without the consent of the right holder under the pre-registration, disposal of such real property in question shall not result in any change to the interests in such real property.

If, after the making of the pre-registration, the party(ies) fails to effect the registration within three months following the date on which the creditor's right terminates or it is able to effect registration of such real property, the pre-registration shall cease to have any effect.”

2. Understanding of pre-registration

In China, one cannot legally own any real property unless such property is recorded under such person's name on the realty registry book maintained by a registry agent. However the registration process takes time. In many cases, after the conclusion of a contract for purchasing real property, the seller may be able to re-sell the same piece of property to another buyer before such property is duly registered under the first purchaser's name, leaving the first purchaser exposed to great losses of both the money he has advanced to the seller and the property itself provided that the later buyer effects the registration of the real property under his name ahead of the first purchaser. Reported cases of this kind have prompted outcry in the market for legal protection for the buyers. That is why the pre-registration, as a type of registration of caution, is introduced in the Property Law.

To further understand this legal system, you need to note:

- (1) pre-registration is applied only to real property, namely, land and buildings, not personal property which generally does not have a registration system;
- (2) there should be an agreement on pre-registration arrangement between the transacting parties, without which the registration agent will reject application thereof;
- (3) pre-registration has a time limit after which pre-registration ceases to function.

3. Scope of application

To implement the Property Law, the Ministry of Housing and Urban-Rural Development promulgated

the Measures on Building Registration (the “Measures”), effective as of July 1, 2008. Article 67 provides for four cases where pre-registration is applicable, i.e.:

- (1) purchasing houses under construction;
- (2) creating mortgage over house under construction;
- (3) transferring and mortgaging the ownership of houses;
- (4) other circumstances prescribed by laws and administrative regulations.

4. Miscellaneous

As pre-registration is agreed by parties concerned, it is required in principle that parties to the transaction apply for pre-registration together, as set forth in Article 12 of the Measures. However, according to Article 69 of the Measures, if the seller to a contract for sale and purchase of a house under construction fails to make the pre-registration with the buyer thereto in accordance with their agreement, the buyer may apply for pre-registration on its own.

Pursuant to Article 15 of the Measures, a party may entrust an agent to effect pre-registration on his behalf. In the case of a foreigner entrusting an agent, the power of attorney shall be notarized or attested.

If you want to know more about this pre-registration system, please contact me by email: doroto@163.com.

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