

Study on the Legal Issues of Cooperative Housing Construction

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Abstract

Multi-actor cooperative use of rural residential land to build housing has become a key modality in the latest round of residential land reform. It is an important avenue for comprehensively promoting rural revitalization, guaranteeing that every farm household “has a place to live,” and fostering integrated development of primary, secondary, and tertiary industries in rural areas. Yet, in recent judicial practice, disputes arising from cooperative housing construction have steadily increased, and intermediate people’s courts across regions have rendered inconsistent rulings on the validity of such agreements—identical cases have been decided differently. The core reason is the restrictive rules on the transfer of residential land. In addition, some agreements are deemed invalid because their contents harm State or collective interests. For these agreements to be recognized as valid, judicial adjudication standards must first be refined so that court rulings accord with national policy; next, the rights of both parties—especially the land rights that investors or non-members of the rural collective may enjoy—must be clarified; and finally, supervision over cooperative construction must be strengthened to prevent collusion aimed at illicitly maximizing private gains at the expense of the State or the collective.

Keywords

Cooperative housing construction; rural residential land; validity determination; non-collective member

1. Introduction

In 2016, the General Office of the State Council issued the “Opinions on Supporting Return-to-Hometown and Down-to-Country Personnel in Innovation and Entrepreneurship to Promote Integrated Development of Rural Industries” (Guobanfa [2016] No. 84), first proposing that returnees and local farmers be allowed, on the premise of complying with rural residential land management rules and relevant planning, jointly to renovate self-use housing. In 2019, the Ministry of Agriculture and Rural Affairs reiterated support for farmers’ cooperative revitalization of idle residential land and dwellings (Nongjingfa [2019] No. 4). The 2020 national pilot program for the “tripartite division of rights” on rural residential land encouraged farmers to use

idle land cooperatively for rural industries. The Third Plenary Session of the 20th CPC Central Committee in 2024 again advocated “revitalizing idle residential land through capital contributions, shareholding, and cooperation.” Against this backdrop, places like Liuyang, Hunan, have experimented with urban–rural cooperative housing on rural residential land.

Cooperative housing construction on rural residential land refers to a model in which the holder of residential land use rights supplies the plot, while another member of the same collective—or a non-member (including members of other collectives or urban residents)—contributes capital to build housing on that plot. It is a new mode of activating residential land. Yet both academia and judicial practice question the validity of agreements concluded between non-members and residential land holders, with divergent views of validity and invalidity. To examine the validity of such agreements, the specific legal bases applied, and the problems arising in practice, this paper collects 100 judgments from China Judgments Online (<https://wenshu.court.gov.cn>) and employs case-based empirical research to analyze the mainstream judicial stance, reveal the key factors affecting validity, and propose improvements.

2. Judicial Opinions on the Validity of Cooperative Housing Construction Agreements on Rural Residential Land

Among the 100-plus judgments reviewed, 92 were held invalid at both first and second instance; in three cases the first-instance court upheld validity but the second reversed; the remainder were affirmed as valid.

2.1. Grounds for Invalidity

Courts have invalidated agreements on four main grounds:

- 1) Most courts reason that, under the “unity of land and house” principle, agreements between non-members and farmers necessarily involve transfer of residential land use rights. Since these rights are tied to membership in the collective, non-members may not obtain them, and the Land Administration Law prohibits transfer, sale, or lease of collectively owned land for non-agricultural construction. Thus such agreements violate mandatory legal provisions [1].
- 2) Some courts hold that the agreements, though styled “cooperative construction,” are in substance disguised transfers, employing sham declarations to conceal an illegal purpose, and therefore void under Art. 146 of the Civil Code [2].
- 3) Other courts find that the agreements violate the statutory procedures for collective land conveyance, which require approval by at least two-thirds of the collective’s members or their representatives [3].
- 4) A further group of courts emphasizes that cooperative construction, absent approval for conversion to collective construction land and lacking any of the statutory purposes (township enterprises, public utilities, or rural housing), amounts to re-

al-estate development in disguise and is therefore invalid [4].

Invalid agreements share three features: a) they typically involve non-members; b) even if the agreement is void, profit-sharing clauses are respected when expropriation occurs [5]; c) courts apportion fault between the parties for post-invalidisation restitution [6].

2.2. Grounds for Validity

Valid agreements fall into two categories:

a) Agreements between members of the same collective. Courts hold that, provided the agreement reflects genuine intent and meets formal requirements, it is valid.

b) Agreements between non-members and residential land holders. Some courts accept the conceptual separation of land and buildings, upholding the validity of house-allocation clauses [7]. Where both parties are members, the transferee may under the unity principle obtain the residential land use right; Supreme People's Court precedents treat intra-village house sales as implicitly transferring the underlying land. Courts also reject intra-member challenges based on the "one household, one homestead" rule, holding that this rule is not an "efficacy-related mandatory provision" under the 2019 National Court Conference Summary [8].

3. Theoretical Analysis of the Validity of Cooperative Housing Construction Agreements

3.1. Debate Between "Unity of Land and House" and "Separation of Land and House"

One view insists that cooperative construction on residential land is a disguised transfer; if a party is a non-member, the agreement should be invalid. An opposing view, reflecting practice under current reform, treats land and buildings as separate properties and upholds house-allocation agreements as valid. These positions map onto the debate over whether the unity principle of Art. 357 Civil Code applies.

Some scholars argue that the unity principle operates only at the disposition stage, not the creation stage, and that residential land use rights are a *sui generis* usufruct separate from construction-land use rights. Others contend that denying the unity principle would fracture urban-rural land markets. This paper argues for the unity principle: cooperative construction involves disposition of land; residential land is a sub-category of construction land under the Land Administration Law; land and buildings are economically inseparable; and practice (e.g., Zhangjiajie's urban-rural cooperative rules) endorses unity. The challenge is to legitimate land rights for non-member investors while respecting this principle.

3.2. Cooperative Construction and the "One Household, One Homestead" Rule

Some scholars argue that the rule applies only at the application stage, while others

insist it is a continuing obligation. This paper contends that the rule must be observed continuously; yet inheritance or gift may yield “one household, multiple homesteads,” necessitating nuanced regulation.

4. Dilemmas in Cooperative Housing Construction on Rural Residential Land

4.1. Deficient Judicial Standards

Courts are conservative, mechanically citing transfer restrictions. Yet residential land use rights are not inherently inalienable; under the tripartite division, only the qualification right is strictly tied to membership, while use rights may be shared or transferred for a term. Overly strict adjudication stifles reform.

4.2. Uncertain Rights of the Parties

Legitimate land rights are the core of validity. The most urgent issue is securing land rights for non-member investors while safeguarding farmers’ qualification rights and living security.

4.3. Inheritance Dilemmas

Judgments recognize heirs’ shares under valid agreements, but problems arise when heirs are non-members. National policy (e.g., 2011 Ministry of Land and Resources Opinion) allows non-members to inherit and register homesteads under the unity principle, yet the 2024 Rural Collective Economic Organization Law lists death as a cause for loss of membership without retention of rights, raising questions over inheritability.

4.4. Regulatory Dilemmas

Some agreements aim solely at capturing future expropriation compensation; unregulated construction may encroach on arable land or exceed statutory areas. Capital preferentially flows to well-located villages, aggravating regional inequality. “Hollow villages” also give rise to agency problems where land holders later disavow agreements signed by proxies.

5. Improving Cooperative Housing Construction on Rural Residential Land

5.1. Refining Judicial Standards

Judges should study current reform policies and interpret imperfect statutes in light of innovation needs. Higher courts should select guiding cases; the Supreme People’s Court should issue normative cases to unify standards nationwide.

5.2. Rational Allocation of Rights

5.2.1. Investor Is a Collective Member

Both parties may obtain co-ownership of the house; the investor, as member, may register the underlying residential land use right, noting co-ownership.

5.2.2. Investor Is a Non-Member

Most courts reject direct transfer. Under the tripartite division, the optimal solution is conversion of residential land to collective commercial construction land. Procedures:

- a) Register the original residential land use right.
- b) Voluntary withdrawal with compensation; collective consolidates and applies for conversion.
- c) After township approval and public notice, non-members obtain a term-limited collective commercial construction land use right (up to 70 years) upon payment of a concession fee and collective approval.

5.2.3. Living Security of Collective Members

Members may retain a “qualification right”: upon expiry of the non-member’s right, the member enjoys priority to re-acquire a residential land use right within the original quota, compensating the investor for the building share and re-registering sole ownership.

An alternative “dual-track” system—modeled on state land allocation/grant—would allocate a portion of converted land to members gratis for living security while leasing the remainder to investors.

5.3. Regulating Inheritance

Legislation should clarify whether residential land use rights are inheritable personal property. The recommended approach is conversion of the land to another collective construction land sub-type upon the holder’s death, allowing heirs—regardless of membership—to inherit the converted use right.

5.4. Regulating Cooperative Construction

5.4.1. Strengthening Supervision

Collectives and township governments should screen investors, register investment purposes, monitor compliance, and impose penalties including revocation of land rights. Collective members should be educated and incentivized to supervise.

5.4.2. Implementing a “Bottom-Line” Approach

Non-negotiable red lines: collective ownership, members’ living security, protection of arable land, and food security.

5.4.3. Developing New Collective Economy

Collectives may act as intermediaries, pooling converted land and negotiating with investors, achieving scale development and balanced regional growth.

6. Conclusion

Among the 100-plus judgments, 92 final rulings invalidate cooperative agreements, all citing transfer restrictions. Through empirical and theoretical analysis, this paper proposes pathways for land conversion, land rights for non-members, living security for members, and improved regulation, thereby supporting the 2019 No. 1 Central Document's call for "steady and prudent reform of the rural residential land system," increasing farmers' incomes, and advancing rural revitalization.

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