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硕 士 学 位 论 文

论我国住宅专项维修资金制度面临的问题及其完善

The Issues and Resolutions for China's Residential  
Special Maintenance Funds System

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## 论文摘要

住宅专项维修资金制度伴随着建筑物区分所有权制度的建立而形成和发展起来的，是物业管理制度的重要组成部分之一。但由于我国过去房屋产权体制单一，物业发展晚，专项维修资金制度也发展缓慢。随着住房体制的改革，商品住宅大量兴建，业主入住率的提高，对住宅共用部位、共用设施设备的维护、更新和改造问题也逐步出现，因此，对专项维修资金制度的研究日益受到了人们的重视。

目前，我国在专项维修资金的立法上还比较滞后，且很不规范，实践中出现了不少问题，妨害了物业的安全和人们的安居乐业，给社会造成了极不安定的因素。本文从实践出发，结合相关理论，对实践中出现的问题进行分析，并提出相应的对策。同时，也对《住宅专项维修资金管理办法》（征求意见稿）提出些粗浅的修改建议。

本文由引言、正文和结论三大部分构成。

引言部分介绍了论文写作的动机、写作背景、写作方法和写作意义等。笔者试图通过引言部分的交待，引起人们对专项维修资金制度关注。

正文部分共分四章。

第一章对专项维修资金制度产生的世界历史背景进行了论证，并简单介绍了数个立法例。同时，对我国的专项维修资金制度发展史上的数个法律规范性文件进行了述评。在此基础上，介绍了我国住宅专项维修资金的性质、使用和管理的原则等。

第二章主要结合本省实践，从专项维修资金交存、管理、使用和续筹四个环节出发，逐一介绍了这些环节中容易产生的问题，旨在引起人们的反思。

第三章在研究了专项维修资金存在的诸多问题的基础上，深入探讨产生这些问题的原因。其原因是多方面的，如法律法规不健全、维权机构不完善、维权意识低、行政管理不到位、约束机制不力等。

第四章针对本文前面章的研究，提出了完善专项维修资金制度的相关措施。包括宏观上的立法完善，微观上的制度规范以及加强全方位的监控、加大打击违

法犯罪行为的力度等。

第五章针对《住宅专项维修资金》(修改意见稿)中规范的名称、交存比例、交存主体、交存时间、使用原则、法律责任、投诉制度和民事诉讼等方面提出修改建议。

结论部分是本人对全文的观点进行的总结,并提出了对专项维修资金理论和立法的展望。

**关键词:** 维修资金、物业管理、物权法

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## ABSTRACT

Residential special maintenance funds system has been developed as a result of the building ownership distinction system and is an important and integral part of the property management system. With oversimplified housing ownership system in the past and late start of property management business and ordinance, the development of residential special maintenance funds system has been very slow. Following the reform of residential housing system, commercialized residential housing units have been constructed at unprecedented scale and the occupancy rate has been improving steadily, which leads to issues for the maintenance, improvement, and renovation of shared areas, facilities, and equipments. Hence, it is imperative to conduct research on the residential special maintenance funds system.

As of today, the legislation on the residential special maintenance funds is significantly lagging and lacks unified standards, which leads to serious issues in the industry and threatens the safety of the property management personnel and happiness and security of the people as well as the stability of the society. This paper attempts to combine theory with practice in the area of residential special maintenance funds system and propose resolutions to address issues from the practice. Furthermore, this paper proposes suggestions to improve the “Residential Special Maintenance Funds Management Approach” (Draft, for solicitation of opinions).

There are three components in this paper: Preface, Main Section, and Conclusions.

Preface section introduces the rationales for writing this paper as well as background, approaches, and significance of this paper. The author hopes to attract the attention of people to the importance of this topic with this section.

The Main Section has five chapters.

The first chapter conducts research on the historical background for the residential maintenance funds system from global perspective and briefly introduces several legislative cases. Also analyzed are several legal and regulatory documents in the history of China’s residential special maintenance funds system. Moreover, this chapter examines the nature of residential special maintenance funds and the principles for its use and management.

The second chapter focuses on the practice of Fujian province in the areas of the funds' generation, management, spending, and balance maintaining and examines issues associated with each area with the hope of bringing attention to these issues.

The third chapter explores reasons associated with above mentioned issues, such as issues with laws and regulations, rights enforcement structure and consciousness, government administration, and supervisory mechanism.

The fourth chapter builds upon the study done in previous chapters, proposes how to improve residential special maintenance funds system, including legislative improvement at the macro level, system standardization at the micro level, enhancing supervision from all aspects, and better enforcement of laws and regulations and fully punishing any criminal behavior.

The fifth chapter provides personal suggestions to improve "Residential Special Maintenance Funds Management Approach" (Draft, for solicitation of opinions), including standardized terminology, funds ratio, funds subjects, timing, principles of utilization, legal liabilities, complaint settlement, and civil lawsuits.

The Conclusions section summarizes the main conclusions of this paper and explores the futures of theory and legislation for residential special maintenance funds system.

**Key words:** Maintenance funds, Property management, Property Rights Law

目 录

前 言 .....	
<b>第一章 专项维修资金概述 .....</b>	
<b>一、专项维修资金制度的建立 .....</b>	
(一) 专项维修资金制度产生的历史背景 .....	
(二) 专项维修资金制度的若干立法例 .....	
<b>二、我国专项维修资金制度的立法述评 .....</b>	
(一) 《城市异产毗连房屋管理规定》 .....	
(二) 《住宅共用部位共用设施设备维修基金管理办法》 .....	
(三) 《物业管理条例》 .....	
(四) 《北京市专项维修资金使用管理办法》(试行) .....	
(五) 《中华人民共和国物权法》 .....	
(六) 《住房专项维修资金管理办法》(修改意见稿) .....	
<b>三、专项维修资金的性质 .....</b>	
(一) 专用资金说 .....	
(二) 信托基金说 .....	
<b>四、专项维修资金的管理和使用的基本原则 .....</b>	
(一) 专项维修资金管理的基本原则 .....	
(二) 专项维修资金使用的基本原则 .....	
<b>第二章 专项维修资金制度存在的主要问题 .....</b>	
<b>一、专项维修资金的交存 .....</b>	
(一) 交存主体 .....	
(二) 专项维修资金首次缴交时间、方式和计交标准 .....	
<b>二、专项维修资金的管理 .....</b>	
(一) 专项维修资金的代管主体 .....	
(二) 目前常见的三种主要的管理模式 .....	
<b>三、专项维修资金的使用 .....</b>	



(一) 专项维修资金的使用范围 .....	
(二) 专项维修资金的使用程序 .....	
<b>四、专项维修资金的续筹</b> .....	
<b>第三章 专项维修资金制度不完善的原因分析</b> .....	
<b>一、专项维修资金的立法滞后且不完善</b> .....	
<b>二、业主对专项维修资金缺乏必要的认识和维权意识</b> .....	
(一) 业主对专项维修资金认识欠缺 .....	
(二) 业主的维权意识低 .....	
<b>三、业主大会及业主委员会未能充分发挥作用</b> .....	
(一) 业主大会及业主委员会成立难 .....	
(二) 业主大会及业主委员会难以发挥作用 .....	
<b>四、行政主管部门缺位、错位或越位现象严重</b> .....	
<b>五、缺乏必要的约束和监督机制</b> .....	
<b>第四章 专项维修资金制度的完善</b> .....	
<b>一、在宏观上完善专项维修资金制度的立法体系</b> .....	
<b>二、在微观层面上尽快确立地方专项维修资金的各项具体制度</b> .....	
<b>三、加大专项维修资金宣传力度</b> .....	
<b>四、加强对专项维修资金的监管</b> .....	
(一) 完善业主大会和业主委员会制度 .....	
(二) 强化政府房地产行政主管部门的管理和监督职能 .....	
(三) 发挥全社会的监管力量 .....	
<b>五、加强对专项维修资金的审判和对违法犯罪的打击力度</b> .....	
<b>第五章 对《住宅专项维修资金管理办法》(征求意见稿)</b>	
<b>的修建议</b> .....	
<b>一、规范的名称</b> .....	
<b>二、交存比例及交存主体</b> .....	
<b>三、交存时间</b> .....	
<b>四、使用原则</b> .....	

目 录

---

五、法律责任.....

六、投诉.....

七、民事诉讼.....

结 论.....

参考文献.....

厦门大学博硕士论文摘要库

厦门大学博硕士学位论文摘要库

**CONTENTS**

<b>Preface</b> .....	
<b>Chapter 1 Overview of special maintenance funds</b> .....	
<b>Subchapter 1 Establishment of special maintenance funds system</b> .....	
Section 1 The historical background of special maintenance funds system .....	
Section 2 Several legislations on special maintenance funds system .....	
<b>Subchapter 2 Review of China’ s legislations on special maintenance funds system</b> .....	
Section 1 “Adjoining City Housing Regulations” .....	
Section 2 “Management Approach for the Maintenance Funds for the Shared Areas, Facilities, and Equipments” .....	
Section 3 “Property Management Regulations” .....	
Section 4 “Management Approach for the Special Maintenance Funds in Beijing (Trial)” .....	
Section 5 “People’s Republic of China Property Rights Law” .....	
Section 6 “Residential Special Maintenance Funds Management Approach” (Draft, for solicitation of opinions) .....	
<b>Subchapter 3 The nature of special maintenance funds</b> .....	
Section 1 Dedicated funds .....	
Section 2 Trust funds .....	
<b>Subchapter 4 Basic principles for the management and utilization of special maintenance funds</b> .....	
Section 1 Basic management principles .....	
Section 2 Basic utilization principles .....	
<b>Chapter 2 Major issues with special maintenance funds system</b> .....	
<b>Subchapter 1 Generation of the funds</b> .....	
Section 1 Funds subjects .....	
Section 2 First payment time, payment method, and payment standards .....	
<b>Subchapter 2 Special maintenance funds management</b> .....	
Section 1 Escrow managers .....	

Section 2	Three common management models .....
<b>Subchapter 3</b>	<b>Utilization of special maintenance funds</b> .....
Section 1	Scope of utilization .....
Section 2	Rules for utilization .....
<b>Subchapter 4</b>	<b>Balance maintaining for the funds</b> .....
<b>Chapter 3</b>	<b>Analysis of the reasons for the issues associated with special maintenance funds system</b> .....
<b>Subchapter 1</b>	<b>Lagging of legislation on the special maintenance funds</b> .....
<b>Subchapter 2</b>	<b>Lack of sufficient appreciation of the importance of the funds by the property owners and their consciousness to protect their rights</b> .....
Section 1	Lack of sufficient appreciation of the importance of the funds .....
Section 2	Lack of consciousness to protect their rights .....
<b>Subchapter 3</b>	<b>Lack of sufficient utilization of owner meetings and owner Associations</b> .....
Section 1	Difficulties to hold owner meetings and establish owner associations .....
Section 2	Difficulties to utilize the owner meetings and owner associations ..
<b>Subchapter 4</b>	<b>Lack of management, mismanagement, and over-management from the governmental offices</b> .....
<b>Subchapter 5</b>	<b>Lack of supervisory mechanism</b> .....
<b>Chapter 4</b>	<b>Improving special maintenance funds system</b> .....
<b>Subchapter 1</b>	<b>Improving legislative structure at the macro level</b> .....
<b>Subchapter 2</b>	<b>Establishing and improving local regulations at the micro level</b> .....
<b>Subchapter 3</b>	<b>Promoting efforts to increase awareness</b> .....
<b>Subchapter 4</b>	<b>Improving supervision of the funds</b> .....
Section 1	Improving the systems of owner meetings and owner associations ..
Section 2	Enhancing administrative management and supervision .....
Section 3	Utilizing the supervisory power from the society .....
<b>Subchapter 5</b>	<b>Strengthens to the special service fund trial and to dynamics the illegal crime attack</b> .....

<b>Chapter 5</b>	<b>Suggestions on “Residential Special Maintenance Funds Management Approach”</b>	
	<b>(Draft, for solicitation of opinions),</b>	.....
<b>Subchapter 1</b>	<b>Standardized terminologies</b>	.....
<b>Subchapter 2</b>	<b>Funds ratio and funds subjects</b>	.....
<b>Subchapter 3</b>	<b>Funds timing</b>	.....
<b>Subchapter 4</b>	<b>Principles of utilization</b>	.....
<b>Subchapter 5</b>	<b>Legal liabilities</b>	.....
<b>Subchapter 6</b>	<b>Complaints settlement</b>	.....
<b>Subchapter 7</b>	<b>Civil lawsuits</b>	.....
	<b>Conclusions</b>	.....
	<b>Bibliography</b>	.....

厦门大学博硕士论文摘要库

厦门大学博硕士学位论文摘要库

## 前 言

随着我国住房制度的改革和人民生活水平的提高,越来越多的城乡居民购买了商品房,从过去租住国有公房的租户成为了拥有私人住房的业主,这种角色的变迁,相应地导致权利与义务的变化。其中,最明显的变化是住房不再由政府房地产行政主管部门进行管理,而是由业主们通过签订物业服务合同,聘用物业公司进行服务。而房屋的维修、更新和改造的责任也相应地由过去国家或产权单位承担逐步过渡到业主个人承担。专项维修资金就是顺应这种产权的变迁而产生的。但由于我国住房制度改革时间较短,相应地,物业管理工作起步也较晚,对于物业专项维修资金的立法更是不完善、不规范、不统一、约束力不够,在专项维修资金的交存、管理、使用和续筹中,资金不到位、资金被挪用、资金被乱用,以及其他损害业主利益的情况屡有发生,如何使专项维修资金发挥其应有的物业保命钱的作用,成为实践中亟待解决的问题。

专项维修资金作为社会保障体系的一部分,涉及面广,触及的矛盾多,关系到开发建设单位、产权单位、物业服务公司、业主、使用人和政府等多方主体的利益。如何交存、管理和有效使用专项维修资金,维护和保持物业的良好状态,是关系到物业的安全、保值、增值和业主安居乐业的百年大事。本文从实践出发,通过列举实践中已经出现的问题,分析产生这些问题的主、客观原因,提出了进一步规范专项维修资金交存、使用、管理以及续筹的对策和看法。旨在通过本文起到抛砖引玉的作用,引起社会对专项维修资金制度的研究的重视,并希冀对我国的物业专项维修资金理论、实践和正在制定中的《住宅专项维修资金管理办法》的立法有所裨益。



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