

不动产登记民行交叉案件审理新模式探析

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# 厦 门 大 学

## 硕 士 学 位 论 文

### 不动产登记民行交叉案件审理新模式探析

#### A Study on New Trial Mode Regarding Real Estate

#### Registration Civil-Administrative Interweaving Case

纪 荣 凯

纪荣凯

指导教师

齐树洁  
教授

指导教师姓名: 齐树洁 教授

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## 中文摘要

不动产登记案件中民事争议与行政争议交叉现象日渐显现,但目前我国法律尚未具体规定民事与行政交叉案件的审理办法,司法解释也未对此提出周详的解决方案,如何正确审理此类案件成为司法界一大难点问题。本文以实践中产生争议最大、问题最多的一类民行交叉案件——不动产登记纠纷为研究视角,在现有法律框架下,澄清实践中一些错误的观念和看法,提出并行诉讼模式,为解决当事人的民事、行政争议并使登记记载与事实归于一致提供了一种新鲜的模式。全文除引言和结语外,分为四章:

第一章从四个常见案例入手对不动产登记纠纷进行类型化研究,介绍了现行民事、行政交叉案件的五种常见的审理模式,并对这五种审理模式遭遇的困境进行反思。现有的五种审理模式都存在着不足之处:完全以不动产登记为依据会产生司法既判力和诉讼公正相冲突的隐患;“先行政后民事”模式会使诉讼久拖不决;行政附带民事诉讼模式的推广受到现有立法的束缚;不区分案件情形的案件审理模式有可能损害行政执法和司法的统一性;民事诉讼无法单独胜任对行政行为的全部审查。

第二章通过对不动产登记性质、不动产登记机关的审查标准进行理论分析后,提出笔者对不动产登记效力的新认识:不动产登记是行政确认,是具体行政行为的一种,具有公定力、确定力、拘束力、执行力。我国的登记机关采取以形式审查为主的审查标准,故登记的公定力是有限的,拘束力和确定力是相对的。

第三章以对不动产登记性质的分析为基础,提出并行诉讼这种审理案件的新模式。对于不动产登记行为引发的纠纷,审查登记行为合法性的行政诉讼和审查登记行为所涉及的基础民事法律关系的民事诉讼可以并行,选择何种诉讼关键看当事人对登记内容的真实性还是对登记行为合法性有异议。当事人对登记内容的真实性有异议的时候,争议产生于登记行为所涉及的基础民事法律关系之上,当事人意在解决权属的确定问题,应诉诸民事诉讼程序;当事人对登记行为的合法性有异议的时候,争议产生于行政法律关系,因行政机关的登记行为所引发,当事人意在追究登记机关之过错引发的登记不实的行政赔偿责任,应诉诸行政诉讼程序。如果当事人两者并举,则民事与行政并行不悖。

第四章从宏观上构建了不动产登记行民交叉案件的协调机制。司法实务界与理论界、司法机关和行政机关以及法院内部的审判部门之间应互相协调，共同解决司法实务难题。并行诉讼模式正是从司法实用主义角度出发，在目前司法环境下展开探讨的一种有助于协调司法内外冲突、有效保护当事人合法权益的解决民行交叉案件难题的模式。

**关键词：**不动产登记；公定力；并行诉讼

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## ABSTRACT

The interweaving of civil and administrative disputes is becoming more and more apparent in real estate registration cases. To date, legislations in our country have specifically not dealt with how to hear civil and administrative interweaving cases, and judicial interpretations does not render detailed solutions either. As a result, how to correctly adjudicate such cases has become a difficulty for the judicial system.

With a perspective on the dispute regarding real estate registration, the most contentious and problematic civil and administrative interweaving case in practice, and working from current legal framework, this article clarifies some wrong concepts and ideas in practice, and proposes parallel litigation mode, which can serve as a new approach in handling civil and administrative disputes, and in maintaining consistency between record in registration and fact. Aside from introduction and conclusion, the article consists of four chapters:

The first chapter studies real estate registration disputes categorically through four common cases, introduces five common adjudication modes in current civil and administrative interweaving cases, and reflects on the difficulties encountered in the five modes. All of the five current modes have deficiencies: using real estate registration as the single basis may potentially lead to conflicts between *res judicata* and justice in litigation; the mode of first administrative then civil may prolong litigation without timely judgment; the popularization of the mode of civil litigation attached to administrative litigation suffers from constrains under current legislative system; adjudication mode that does not differentiate among cases may harm the consistency between the administrative implementation of law and administrative procedure; civil litigation can not fully examine administrative acts independently.

The second chapter, through theoretically analyzing the nature of real estate registration and the examination standards adopted by real estate registration agency, proposes the author's new understanding of the effect of real estate registration: real estate registration serves as administrative ascertainment, which is a kind of specific administrative act, and boasts of presumed validity, certainty, force of constraint and enforceability. The examination standards adopted by registration agencies in our country are mainly formalistic standards, thus have only limited presumed validity,

and relative force of constraint and certainty.

The third chapter, on the basis of an analysis on the nature of real estate registration, proposes parallel litigation as a new mode. When handling disputes arising from real estate registration, administrative litigation which examines the legitimacy of registration *per se* and civil litigation which examines the relevant basic civil legal relation can parallel with each other. The choice of which route to follow hinges on whether the dispute is about the authenticity of registration, or is about the legitimacy of registration. Where litigants have different views about the authenticity of registration, the dispute can be regarded as arising from the basic civil legal relation, thus litigants shall resort to civil procedure when seeking to ascertain the ownership; where litigants have different views about the legitimacy of registration, the dispute can be regarded as arising from administrative legal relation, and triggered by administrative organ's registration act, thus litigants shall resort to administrative procedure when seeking administrative damages for unreal registration caused by administrative organ's faults. Where litigants choose to follow both routes, then administrative and civil procedures can parallel.

The fourth chapter reflects on the building of judicial coordination capacity and establish the coordinative regime for real estate registration civil and administrative interweaving case. People in both legal practice and research, administrative organs and judicial organs, and internal organs of courts shall coordinate with each other to communally resolve difficulties in legal practice. Parallel litigation is a mode that is explored under current judicial environment, which starts from legal pragmatism, and will be beneficial to the coordination of internal and external judicial conflicts and to the protection of litigants' legitimate interests.

**Key Words:** Real Estate Registration; Presumed Validity; Parallel Litigation.

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