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关于异议登记法律问题的探讨

The Research on the Legal Questions of the Dissidence Registration

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内容摘要

异议登记是我国《物权法》中规定的一种不动产登记类型。在不动产登记簿记载可能有误的情况下，其对真实权利人及利害关系人提供一种救济，即通过在不动产登记簿上记载登记异议，排除登记的公信力，从而达到维护真实权利人及利害关系人的目的。

异议登记在我国的理论和实践中发挥着重要的作用。作为登记对象的不动产，其范围甚广，包括土地异议登记和房屋异议登记两种。由于《物权法》中未对土地异议登记和房屋异议登记进行细分，而在之后颁布的《土地登记办法》和《房屋登记办法》中，则对土地异议登记和房屋异议登记进行了比较详细的论述。故而，探讨异议登记法律问题确有必要。

本文以异议登记的内涵为视角，在探究实务问题，诸如异议登记的适用条件、异议登记利害关系人的范围、异议登记的审查形式、异议登记的期间性质、异议登记的效力诸问题之基础上，提出行之有效的救济途径，即适用条件采用利害关系人直接提起和登记机关依职权提出申请的方式、将利害关系人范围细化、明确为形式审查、期间性质明确不是除斥期间、效力明确为允许登记权利人行使处分权，以期达到完善我国异议登记制度之目的。全文分五个部分，包括引言、异议登记概述、我国异议登记制度的诸问题探究、我国异议登记问题解决之对策、结语。主要内容如下：

第一章、异议登记概述。本章对异议登记的概念、特征、效力、申请时点与注销进行了全面的论述，在分析我国异议登记必要性与可行性的基础上，对国外异议登记法律制度进行比较研究，在借鉴国外相关法律制度的同时，为我国相关制度的构建埋下伏笔。

第二章、我国异议登记制度的诸问题探究。本章在对异议登记的适用条件、利害关系人的范围、审查形式、期间性质和申请次数以及效力方面出现的问题逐一进行剖析之基础上，指出这些问题不仅国外有之，国内也必当解决。否则，不仅具体操作中的困顿难以避免，而且理论上的问题更会加剧实践中的冲突。

第三章、我国异议登记问题解决之对策。针对前章所提及之问题，从以下五个方面详加论述：就异议登记的适用条件而言，利害关系人可以在不用征得登记权利人同意的情形下，直接提出异议登记申请，登记机关也可以依职权提起异议登记申请；就利害关系人的范围而言，应对利害关系人的具体范围作出细化规定，利害关系人是由于登记簿记载错误或物权变动而遭受直接利益损害的人；就审查形式而言，应明确为形式审查，而非实质审查，有利于商事交易的安全迅捷；就期间性质和申请次数而言，应明确不是除斥期间，并且异议登记只能申请一次；就效力而言，应明确异议登记之后，允许登记权利人行使处分权，异议登记不会对其所订立的不动产处分合同造成影响。

关键词：异议登记；不动产；规制

ABSTRACT

The dissidence registration is one type of registrations in the Real Right Law of the People's Republic of China. It provides a way of relief for the right holder and the interested parties in the case of the possible errors of the items recorded in the register of the real estate — namely, through records of the dissidence on the register of the real estate, it will reveal the credibility of excluding registration to keep and relieve their own rights.

The dissidence registration plays an important role in the theory and practice of our country. The object of it is real estate, which ranges from land dissidence registration to housing dissidence registration. However, there is no subdivision to those in the Real Right Law of the People's Republic of China. Later, the Regulation on Land Registration and the Regulation on Housing Registration have comparative detailed exposition on the above two. Therefore, it's necessary to research on the Legal Questions of the Dissidence Registration.

This paper discusses the connotation of the dissidence registration on researching the practical problems —— applicable conditions, the scope of the interested parties, examination form, the property of period, the effectiveness. And it provides the relevant solution, that is, applicable conditions adopting the approach of interested parties directly applying dissidence registration, clarification of the detailed scope of interested parties, examination identifying formal examination, the legal nature of duration adopting period of immunity, the effectiveness choosing of no forbiddance of the right holder recorded by the real estate to exercise their right of disposing, so as to perfect the dissidence registration. This article includes five components, including the introduction, the outline of the dissidence registration, the research on the dissidence registration system, the solution to the problem of the dissidence registration and the conclusion. The main content is as follows:

The first chapter deals with the outline of the dissidence registration, mainly discussing the definition, characteristic feature, effectiveness and when to apply or cancel. With the analysis of the necessity and feasibility of the

dissidence registration in our country, I compare it with that from other countries to give an idea to the foundation of related system.

The second chapter discusses the research on the dissidence registration system of our country. This chapter points out that the problems exist in domestic and foreign countries and should be settled after the analysis of applicable conditions, the scope of the interested parties, examination form, the property of period, the effectiveness. Otherwise, we can not only avoid the difficulties in the specific operation, but the theoretical ones will come into conflict with practice.

The third chapter is the solution to the problem of the dissidence registration in our country. On the basis of the first two chapters, I will discuss it in five ways. So far as applicable conditions are concerned, the interested parties can apply for the dissidence registration directly without the approval of the right holder recorded by the real estate, and the registration organ can also made an application for it by their power For the scope of the interested parties, clarification of the detailed scope should be made. The interested parties will be the benefits directly damaged ones due to the mistake of registration or real right change. To the examination form, formal examination should be definite in place of virtual one, since it's to the benefit of safety and quickness on the commercial trade. For the legal nature of duration and the times of application, we ought to make clear that the legal nature of duration is not period of immunity and the dissidence registration can only be applied once. As for the effectiveness, the right holder should be allowed to have the right of disposition of their products after the dissidence registration. The dissidence registration won't affect the contract of the real estate.

Key Words: the dissidence registration; the real estate; regulation.

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引 言

在房地产交易市场中，不动产登记历来非常重要。大多数国家的立法对其都有较为详细的规定。其中，异议登记更是必不可少。异议登记在不动产登记中属于预备登记之一种，源起于普鲁士法，确立于德国民法，继而被瑞士民法、日本民法相继采纳。概言之，异议登记的社会经济背景源于各国对交易安全的重视和国民安全意识日益增强之所致，其产生原因也在于各确立该制度的国家对相对人的保护，对交易秩序的维护。

如所周知，物权变动的公示公信原则一经确定，就会导致其在不动产领域的表现结果不同。如果真实权利人与不动产登记簿记载的权利人（即：登记权利人、名义上的权利人）不一致的情况发生，那么，真实权利人在某些情况下要让位于登记权利人，使合理信赖登记而受让财产的人能够得到绝对的救济。故，异议登记是为达到平衡财产关系之目的而产生的，主要在于对现实登记权利正确性进行对抗，使不动产登记权利公信力效力得以中止，从而维护事实上的权利人及其原始的权利状态。简言之，异议登记作为更正登记的前置辅助手段，具有临时性保障作用。

从我国《物权法》等多部法律法规来看，异议登记的对象为不动产，分别包括土地异议登记和房屋异议登记。为将问题分析地更加深入具体，本文拟对土地异议登记和房屋异议登记兼顾论述。异议登记旨在对错误登记情境下的利害关系人提供一种救济方式。如所周知，阻隔登记的公信力，是对不动产登记的权利合法性推定的效力的暂时性中止，更是对不动产的适格权利人进行临时性保全的措施。笔者认为我国时下的异议登记在适用条件、利害关系人的范围、审查形式、期间性质和申请次数以及效力等诸多方面仍然存在不完善之处，拟对异议登记出现的这些问题进行逐一剖析之基础上，提出解决对策，就完善该项制度进行深入地探讨。

笔者将论述的重点放在如何解决以上异议登记问题层面，分别从以下五个方面进行论述，提出对策：就异议登记的适用条件而言，利害关系人可以在不用征得登记权利人同意的情形下，直接提出异议登记申请，登记

机关也可以依职权提起异议登记申请；就利害关系人的范围而言，应对利害关系人的具体范围作出细化规定，利害关系人是由于登记簿记载错误或物权变动而遭受直接利益损害的人；就审查形式而言，应明确为形式审查，而非实质审查，有利于商事交易的安全迅捷；就期间性质和申请次数而言，应明确不是除斥期间，并且异议登记只能申请一次；就效力而言，应明确异议登记之后，允许登记权利人行使处分权，异议登记不会对其所订立的不动产处分合同造成影响。

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