

# Realistic Dilemma and Improvement Path of Homestead Use Right Inheritance Under “Three Rights Separation”

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**Abstract:** In China, the proportion of the rural population is still high, and for farmers, the residence base that guarantees their survival and development is particularly important. Homestead is the key to solving the housing problem of farmers, and since 2018, China has begun to explore the reform idea of "homestead ownership, eligibility, and the right to use the three rights of separation". The relevant documents in 2023 continue to emphasize that the pilot of rural homestead reform should be continued to promote, which is the first time since 2020 to carry out a new round of rural homestead system reform pilots, and the relevant documents for four consecutive years with the same expression on the homestead system reform pilot deployment, which shows that China attaches great importance to this reform. Under the exploration of the system of "three rights of residence base", the ownership has been clearly attributed to the collective, but the qualification right and the right of use still have problems that need to be solved. This paper focuses on the inheritance of the right to use the homestead base, and discusses the inheritance of the right to use the homestead base through the analysis of the existing laws and regulations, judicial practice and other aspects.

**Keywords:** Three Rights Separation; Homestead Use Right; Inheritance Right; Rural Revitalization

## 1 Introduction

In 2018, the “Document No. 1” made a preliminary discussion on the issue of “three rights of residential land”, and clarified the focus of this work. In the past few years, relevant documents have emphasized the local management of rural residential land, the confirmation and registration of the right of

use, and the pilot promotion of the “three rights of resettlement”, etc. In 2021, in order to solve the problems related to farmers settling in cities, the Document No. 1 of that year emphasized the right of use of the residential land, and allowed farmers to voluntarily transfer the land in return for a fee. In 2023, the document continues to emphasize that it is necessary to continue to promote the pilot work of rural residential base reform, which shows that the state attaches great importance to this reform.

Since the founding of New China, the homestead system has also been slowly changing and gradually developing. The homestead system is both consistent with the closed and aggregated nature of China's rural society and conducive to safeguarding the survival of the peasantry. As the reform of rural homesteads continues to advance, there are a number of practical problems that need to be resolved. [1] The first group of people to move from the countryside to the cities wanted to return to their hometowns to guard their old homes, but they had no membership in the collective economic organizations, and the lack of legal support made it difficult for them to return to their hometowns to guard their homes. Therefore, among the many problems arising from the right to use the homestead, the inheritance of the right to use the homestead is the one that most concerns the people.

In addition to this, the question of how the right to use homesteads enjoyed by some older generations of living villagers can be inherited by their immediate family members who are not members of a rural collective economic organization has also been explored. At the same time, with regard to the “one household, one residence” system, which is closely related to this system, the criteria for the division of “households” vary from place to place, and there is a problem of confusion in the division of residential land. Some places are difficult to find a place, some places a family of several

mouths, are out of the household, everyone has a residential base. And this messy division of homestead, directly related to the inheritance of the right to use the homestead, should cause the relevant departments to pay attention to. In addition, the life practice of the same case, such as the phenomenon of different judgments, all show the need to clarify the inheritance of the right to use the rural residential base.

This paper will be based on the policy of “three rights of residence”, analyze the existing problems of inheritance of the right to use the residence, and analyze whether the right to use the residence can be inherited by clarifying the property property attributes and social attributes of the right to use the residence. It will also propose solutions to the existing problems, such as clarifying the qualifications of the subjects with the status of inheritance right, solving the division standard of “one household, one residence”, and improving the relief of the rights after inheritance of the right to use the residence base.

## **2 Definition and Theoretical Basis of Residential Land Use Right**

### **2.1 The Policy of “Three Rights of Ownership” for Homesteads**

In 2015, in order to further improve the land rights of farmers, the state has begun the pilot reform of the rural residential base system. The “three-rights division” is a major reform initiative proposed for the first time on a national scale in China in 2018, which centers on the “resettlement” of ownership, eligibility and use rights of residential land. In the same year, the “Government Work Report” also clearly put forward the relevant content, to explore the “three rights” reform, marking the official opening of China's residential land “three rights” new era. In 2020, China will build new pilot areas on the basis of the original 2015 pilot areas, which is an important initiative to deepen the reform of the residential land system. The implementation of the specific implementation of the “three rights” of the residence base, must closely grasp the “three rights” and farmers, the relationship between the land, in the protection of farmers' basic rights of residence on the basis of the problem-oriented, according to the different

circumstances of the classified guidance, accurate set of strategies, so as to better promote the rural residence base system in line with the revitalization of the countryside. strategies in order to better promote the construction of a rural homestead system that is compatible with rural revitalization.

### **2.2 Connotation of Homestead and Homestead Use Right**

Homesteads are distinguished in practice in two ways, one being homesteads on state-owned land, and the other being homesteads on collective land. This paper focuses on the latter, refers to the collective construction land used for family residence, living purposes, including housing land, accessory building land and yard land. Homestead is also a unique land rights and interests of farmers living in rural areas, only members of the collective economic organization can apply for a homestead. The right to use a homestead means that villagers who enjoy the right to occupy and use a homestead in accordance with the law may, within the scope of the law, build individual houses and their ancillary facilities on the homestead.

The right to use residential land has the following characteristics: first of all, the subject of the right is a specific identity, in principle, belongs to the members of the collective economic organization. This also shows that because the right to use residential land has certain identity attributes, so non-specific identity subjects can not obtain the right to use residential land through application. Secondly, the right to use the residential land on the collective land has no limitation on the period of use, and is obtained without compensation, with social welfare nature. In addition, the content of the right is mainly to build houses and their ancillary facilities in accordance with the provisions of the law. This content sets a certain limit to the exercise of the right to use the residential land, the right holder can not exceed the scope of the exercise of the right. Moreover, as a usufructuary right, it only emphasizes the right of possession and use, but neglects the right of income.

### **2.3 Qualification of the Subject of Inheritance**

The so-called main body of the right of inheritance is to determine which natural persons, legal persons or other organizations have the right of inheritance in matters of inheritance, so that they have a legal identity and qualifications, and only if they have a specific identity can they receive inheritance in accordance with the law. According to the civil code, the relevant provisions of the inheritance, China's heir subject can be divided into legal heirs and testamentary heirs. But for the inheritance of residential base, through the relevant judicial interpretation of the provisions of the collective property disposal by will, the part of the will is invalid. And residential base belongs to the collective property, so the main body of the inheritance of residential base can not be designated by will. For the right of use of residential land, although the legal nature of the right of usufruct, enjoyed by the villagers, but the law does not give the villagers the right to dispose of their or inherit the right of use of residential land through the will, so it is presumed that the right of use of residential land can not be obtained through the will, and the right should be obtained through the procedures provided for in other laws.

### **3 Analysis of the Current Situation of Inheritance of the Right to Use Rural Residential Land**

#### **3.1 Normative Legal Documents**

Article 10 of the Constitution of the People's Republic of China and article 9 of the Land Administration Law of the People's Republic of China state that the collective owns homesteads, but do not make detailed provisions on the right to use homesteads. Articles 378 and 379 of the Civil Code of the People's Republic of China indirectly indicate the attribute of the usufruct right of the use right of the residential land, and Article 339 indicates the legality of the "three rights to separate" of the contracted land, which has been legally established. However, for the "three rights of residential land use", the current domestic is still at the policy level. Regarding the inheritance of the right to use the residential land, whether in the inheritance of China's Civil Code, or the main law on the management of the residential land, the Land Management Law, and the Implementation

Regulations of the Land Management Law, are all in a state of blankness. From this status quo, China's existing normative legal documents for the right to use residential land is still less, in order to adapt to the current development environment, the urgent need to improve.

#### **3.2 Academic Perspectives**

In the theoretical community, there are several main points of view. The main reason of the supporting faction is that "there is no prohibition of the law, there is freedom", which is to take advantage of the current law on the right to use the residential base without clear provisions for inheritance of this defect. Negative school is mainly from the underlying logic to analyze, the right to use residential land is free, dependent on a particular person, can not be inherited at will. There is also a school of thought, the inheritance of the right to use the residential land should be specifically analyzed, the villagers on the residential land to build a house, can be inherited, there is no house can not be inherited.[2]

For the city children how to inherit the right to use residential land from their parents in rural areas, there are also different views in the academic community. In the past, scholars held a "negative", in 2007, "Hunan agriculture" contained cases, the conclusion is: the main body of the right to use the residential base can only be members of the collective economic organization, can not be "general inheritance" inheritance. [3] However, with the change of time, in the third session of the thirteenth national people's congress, proposal no. 3226, the ministry of natural resources of the approval has clearly pointed out that the children of the town can inherit the right to use the residential base. [4]A study of the literature in recent years reveals that most scholars are supportive of this policy, agreeing that the right to use the homestead can be inherited by non-members of collective economic organizations. And on this reply, has been applied to the specific judicial precedent practice.

#### **3.3 Current State of Practice**

##### **3.3.1 Jurisprudence**

As there are no clear legal norms in China, in the event of the death of a member of a collective organization, some of the heirs will

have disputes over the inheritance of rural houses and land use rights. Inheritance of the right to use the homestead is one of the claims in some cases. Although there are not many relevant cases in China, the homestead is particularly important because it is related to the residence of farmers. Due to the many complexities of each case, for similar situations, different courts will use different laws, give different legal basis for judgment, which results in contradictory judgments. On the "inheritance of the right to use the residence base" in the Chinese referee network searched for more than a hundred cases, these effective cases were analyzed, and found that in similar cases, the following types of decision results will appear.

Before 2020, there will be both affirmative and negative positions. In previous judicial practice, the courts generally held that non-members of collective economic organizations could not inherit the right to use the residential land, ruling on the following grounds: first, because of its status attributes, which restricted members of collective economic organizations from enjoying this right; and secondly, because of its unclear property attributes, as the right to use the residential land was not the legal property of an individual, and therefore could not be inherited, and so on. In the judgment in favor of inheritance, the court reasoning based on the principle of integration of real estate and land, etc.. From these precedents, there are many local laws and regulations across China, and the standards for judging cases are not quite the same. This also points to the need for integrated laws and bylaws to harmonize standards and protect the legitimate rights and interests of all parties.

However, after 2020, except for a few judgments that still denied the right of inheritance, most judgments began to affirm the right of non-members of collective economic organizations to inherit the right to use homesteads. This is based on the fact that on September 9, 2020, the Ministry of Natural Resources (MNR) gave a clear and affirmative answer regarding the inheritance of the right to use residential land. The inheritance of the right to use land in rural areas is based on the principle of "integration of premises and land".

On the contrary, if there is no building on the

homestead, it cannot be inherited on its own. In fact, as early as 2016, the former Ministry of Land had the Regulations on Real Estate Registration (for Trial Implementation), which had relevant provisions on the confirmation of the right to homestead, but did not directly point to the inheritance of its right to use. This response is a supplement and improvement to the previous norms. The supreme people's court (2020) the supreme law line again 375 administrative judgment quoted in full this content, get judicial confirmation. It can be seen that in the current practice, the inheritance of the right to use the residence base weakens its identity attribute.

Due to the citation of the Supreme Court, the response of the Ministry of Natural Resources appeared in a large number of judgments, indicating the gradual recognition and uniformity of judgments in judicial practice, but also for the next step in the laws and regulations to clarify the inheritance of the right of use of the homestead, has an important role in promoting.

### 3.3.2 Policy Prescriptions

With regard to the policy on homesteads, the main provisions of the past two years are as follows:

First, children of former rural residents with existing urban household registration may inherit the right to use a homestead, but the integrity of the house on the homestead must be ensured; if the house is damaged or unoccupied for more than two years, the village collective organization will withdraw the right to use the homestead.

Secondly, people with knowledge can go to the countryside to apply for homesteads. [5] This is also a new policy implemented in pilot areas, such as Zhejiang Province. In order to encourage successful students to return to their hometowns and drive the development of their hometown economy. Under the premise of complying with the regulations, the returnees, rural people and local farmers can cooperate to rebuild their own homes, this new policy is also in line with the call for rural revitalization. At the same time, this is also a response to the current situation of idle and wasteful residential land.

At present, China's rural areas have a variety of land holdings, excessive scale, illegal transactions, unable to determine property rights and other problems, the use of the

introduction of talents to return to their hometowns for development can make most of these properties will be recovered, in order to promote centralized reuse of land. In addition, with the continuous development of urbanization, more and more people from the countryside are flocking to the cities. After moving to the city, the rural houses are idle, but because of the concept of “root”, people moving into the city will not choose to exit, which leads to more residential land idle, and the implementation of this policy is also the revitalization of the use of residential land. But this policy is currently only in a small number of areas to implement the pilot, to be tested in further practice.

#### **4 Problems Faced in the Inheritance of the Right to Use Residential Land**

##### **4.1 Lack of Clarity on the Attributes of the Right to Use Homestead Land**

For inheritance-related issues, one generally thinks of inheritance of property, that for the right to use the residential land, does he have property properties? Can be inherited? This is the prerequisite for us to discuss the inheritance of the right to use the residential base.

In terms of current practice, due to the lack of housing security system in rural areas in China, in order to ensure that the solution to the problem of farmers living, the right to use the residential base since its inception has the function of social security. Unlike general usufruct rights, it can only be transferred within the collective economic organization due to subject restrictions. This also emphasizes the fact that the right to use the residential land has a strict personal attribute, which cannot be transferred between individuals and cannot be directly inherited. [6]

According to China's Civil Code, it can be concluded that the right is a usufruct right, usufruct right in principle have usufruct, can be possession, use, income. From the property of the right, this provision emphasizes that the right to use the residential land has the nature of property. Some people may think that since it has property property, it can be inherited. However, according to Article 362 of the Civil Code, there is no mention of the word “income” in the right to use the residential land.

According to China's current rural land policy and management system, in order to solve the problems of accommodation and living, members of the collective economic organization can apply for a residence base. As villagers are given a homestead free of charge, this right is of a social welfare nature, so the right to use the homestead may not be “offset, rented or sold”. At the same time, article 62 of the Land Management Law contains a number of prohibitions. Such provisions make it lose some of the rights as usufruct, contrary to its nature of usufruct. At the same time, it also emphasizes the identity property and social welfare function of the residence base, and weakens its property.

In summary, we can conclude that although the theory of the right to use the residential base should have both personal and property properties. But to a certain extent, we pay more attention to its identity attributes, for the property attributes are limited in the liberalization, and this has become the inheritance of the right to use the residential base can not be inherited directly as other property, one of the reasons.

##### **4.2 Ambiguous Subject of Inheritance of the Right to Use Homestead Land**

From the existing laws and regulations, it can be clearly understood that the main body of the right of use of residential land with the qualification of applying for acquisition is the member of the village collective economic organization, but as to whether it can be inherited? Through speculation can be concluded. As to what is the subject of "inheriting" the right to use the homestead? Since the relevant provisions are not clear, the conclusion is also presumed.

After the death of the original owner of the right to use the homestead, it can be continued by the legal heirs of his “household”. But in essence, this is not “inheritance”, because the right to use the residential land is originally a household to enjoy, only within the household, you can continue to enjoy the right to use the residential land, but only need to confirm the registration of the right again. However, under the provision of "one household, one residence", how households are to be divided and how a new "heir" is to be elected after the death of the original user right holder, and how the right to register the user right is to be

confirmed, these are matters that need to be clearly stipulated in the law. In addition to this, other new issues arising from intergenerational migration need to be considered in the light of the times. The first is that when the rural population moves to the towns, only the account of the old man of the family is left in the village collective, so when the old man is the owner of the right of use of the residential land, he dies in the town, he has the right of use of the residential land in the village collective. When he dies, can his children in town inherit the right to use the homestead? This question was answered in the affirmative by the Ministry of Natural Resources in 2020 on the inheritance of the right to use the homestead by children in towns, but it is still necessary to introduce specific legislative provisions to guarantee implementation.

#### **4.3 Unclear Definition of “Household” in “One Household, One House”**

If you want to reasonably inherit a residential base, first of all, you should be clear that there is a subject qualification, and secondly, you should also be clear that the subject does not have any other residential base, and that the principle of "one family, one house" is strictly enforced. For the children of members of the collective economic composition, if the original household has more than one child, has been confirmed the right to register the right of use of residential land how to deal with it? Whose name will be re-registered? Do the other children need to be divided into separate households? The relevant provisions are not clear. According to the “Questions and Answers on the Confirmation and Registration of the Right to Use Residential Land and Collective Construction Land”, the identification of the “household” is usually based on local regulations; if there are no relevant regulations, it should be based on the household registration information issued by the public security department, and if it is still impossible to identify the household in this way, it can be resolved through villagers' self-governance in accordance with the situation of the actual farm household. Visible to a large extent, the “household” of the division of villagers rely on autonomy, and such autonomy, so that the division of residential land is more serious, many rural areas there is a family, more households, more

suites of problems.

#### **4.4 Inadequate Post-Inheritance Remedies for the Right to Use Residential Land**

Although since 2020, the Ministry of Natural Resources has responded positively to the inheritance of homestead use rights by urban children. However, this does not mean that all related problems have been solved. If it is assumed that the heir succeeds in inheriting the right to use the homestead, new problems will arise after the inheritance.

##### **4.4.1 Restrictions on the Rights of Non-Members of Rural Collective Economic Organizations**

According to existing policy, it is clear that the right to use a residential land may be inherited by the legal heirs of the owner of the right to use the land, including children whose household registration is in a rural area or in a town. However, the right thus acquired is not the same as the original right, and the heirs cannot have the same rights as the original applicant. It is important to note that, if a house collapses or is lost after inheritance, the homestead may not be rebuilt or used in a different way, but rather the village collectives may reclaim the rights in accordance with the law and make compensation arrangements.

This provision restricts the rights of non-members of collective economic organizations after the inheritance of the right to use the homestead. This is because members of non-collective economic organizations are able to acquire the right to use the homestead on the basis of the principle of “one house, one land”. Since they are able to inherit the house on the homestead of the original homestead use right holder, and since the inheritance of the house cannot leave the homestead, there is no alternative in this case but to allow them to inherit the right to use the homestead and to register it. However, the relevant regulations also point out that when such cases are registered for the confirmation of the right to use real estate, they must be noted in the notation column of the real estate registration books and vouchers. This notation also indicates that these successors, who are not members of the collective economic organization, are not really the owner of the right to use the residential land, so this also raises more questions. Residential land use right on the surface of all heirs can inherit, but

for non-members of the collective economic organization of the heirs, these inheritance is like a “blank check”, inherited the house, can not be rebuilt, renovated, can only wait for the existing housing “self destruction ! The house inherited cannot be rebuilt or renovated, but has to wait for the existing house to “destroy itself”. To a certain extent, the Ministry of Natural Resources to answer this question, to maintain the inheritance rights of all legal heirs, but it did not solve the root of the essential problem - the normal exercise of the right to use the residential base. It means that the relationship between the children of the town and the old family, with the collapse of the house on the homestead also fall apart, from the human point of view, such a norm is really some indifference.

In addition, if the original owner of the homestead right to use the homestead had repaired the house when it was built, and the house was so strong that it remained standing until the death of the first-generation heir, can the first-generation heir inherit the homestead right to use the homestead? At that time, the first generation of heirs (for non-members of rural collective economic organizations), he inherited the right to use the land can be inherited to the next generation? These are also subsequent legislation needs to be considered. Of course, I think, from the same principle of “one house and one land”, can still be inherited.

#### 4.4.2 Subdivision of Members of Rural Collective Economic Organizations

According to Article 62 of the Land Management Law, “One Household, One Residence”, if the legal heir is a member of a rural collective economic organization, and the original user of the homestead dies, but there are other members of the “household” who have not yet reached the standard for subdividing the household, the “household” will continue to exist, and the issue of inheritance of land use rights will not arise. The “household” will continue to exist, and at the same time, the inheritance of land use rights will not occur. If there are no other members in the household, and the legal heir of the inheritance is a member of another household in the village, and meets the conditions for applying for a homestead, the heir can inherit the right to use the homestead in this way. However, it is worth noting that

the right to use the residential land is more based on his or her status as a villager, approved by the collective organization, rather than the inheritance. Another situation is, in the sole heir already have other residential base under the premise, the heir inherited the house of the decedent, this kind of situation in principle should not be given the right to use the residential base, because of the violation of the “one family, one house” principle. However, he or she may be permitted to inherit possession and use of the house in accordance with the law, with only limitations on other rights, although China has not provided for a uniform approach to this situation.

#### 4.5 The Dilemma of Inheriting the Right to Use Residential Land Under Intergenerational Transfers

With the development and changes of the times, China's industrialization and the improvement of electronic information, science and technology, rural farming life can no longer satisfy people's aspirations for a better life. In order to obtain higher incomes, more and more rural people go to the cities to work; coupled with the pursuit of providing better education for their children, it has increased the scale and number of rural population transfers to the cities. Along with the changes of the times, a large number of peasants have gone to work in the cities, leaving the land unused, the housing unused, and the phenomenon of “hollow villages” occurring from time to time. There is a serious imbalance in the distribution of land resources between urban and rural areas, with large urban populations and tight land resources, which can only be improved by optimizing spatial distribution. On the other hand, because of poor infrastructure and rural population transfer, land resources in rural areas have been left idle and have not been reasonably utilized. Nowadays, even though children in urban areas can inherit the right to use residential land, most of them still live outside the village after inheritance, which still results in idle land resources. Land resources are valuable, they are public wealth, and idle land is a huge waste. [7] Therefore, in order to conform to the current direction of economic development, the Land Management Law clearly stipulates that it encourages the revitalization and utilization of unused

residence bases and unused dwellings. In addition, the State has introduced various policies to promote the relevant work and to take a new path towards rural revitalization and villagers' prosperity.

## **5 Path Design for Inheritance of the Right to Use Homestead Land**

### **5.1 Improvement of the Legal System**

In China, the existing regulations on rural residential land, mainly in the Land Administration Law and the Civil Code, are yet to be improved. On the one hand, the right to use the residential land mentioned earlier is a usufruct right, but the current law does not give it the ownership function of a usufruct right. The Land Management Law should regulate in more detail the income and disposal parts of farmers' right of use. At the same time, the Civil Code needs to be supplemented with special provisions so that the right holders can enjoy complete usufruct rights, so as to achieve a balance and unity of all kinds of usufruct rights. On the other hand, it is necessary to make specific provisions on the inheritance of the right to use the residential land, and the relevant provisions should specify the subjects who can inherit the right to use the residential land and the rights they enjoy after inheriting the right to use the residential land. Due to the lack of specific provisions of the higher law, resulting in the lower law, local regulations, administrative regulations, inconsistent standards, to the judicial practice of uniform application of the difficulties. [8] The improvement of these provisions is not only conducive to the process of promoting the reform of residential land, but also from the substantive law to solve the problem of judicial practice in the reference to the law, can promote justice and fairness of the judiciary, to do similar cases across the country the same judgment.

### **5.2 Rent-Based Continuation of Inherited Homestead Use Rights**

In response to the problems that will be faced after the inheritance of the right to use the homestead, the right to use the homestead can be deferred to the children of the town in the form of rent collection. Because the urban children can confirm and

register the right to use the residential base, but after their inheritance and can not be renovated, rebuilt, the house is no longer there, the right is gone, the right to use the residential base will be the village collective recovery. The relevant homestead also does not belong to the children of the town, also need to be recovered. Then, there is the possibility of facing the problem of idle homesteads again, and it is possible to take a different approach by adopting a rental system, which can also make full use of the homesteads. The Land Management Law provides that the vacant rural residential base can be transferred, rented and other ways to obtain a certain income, because now the rural residential base has been recognized and registered, which provides a prerequisite for the transfer and rental of rural residential base. The current law stipulates that the transfer of rural residential land can only take place within the village collective. If city dwellers want to live in the countryside, they can choose to rent it for a long time, with a maximum rental period of 20 years.

The system is envisioned as follows: according to the original provisions of the town children inheritance of residential base is still not allowed to extensive renovation and reconstruction of the house on the ground. But after the collapse of the house, should be given in the original residence on the ground room reconstruction rights, and give their right to choose. The application shall be made to the village committee within 30 days from the date of the collapse of the house on the homestead. Upon the consent of the village committee, the right to rebuild the house on the homestead land is granted. After reconstruction, the ownership of the house belongs to the children of the town. Subsequently, according to the area of the house, the price per square meter, the way to collect rent, to maintain their right to use the homestead land. For the specific price per square meter, each city to develop a unified standard, the disposable income of rural residents can be used as a reference, to achieve consistency within the same administrative region. In addition, the homestead right of use in this case is different from the rural rental housing occupied by ordinary town residents, and this paper argues that there should not be a rental period. Because the right to set up the

purpose is to let the original home have feelings of urban children to stay in the old house land. Because of the work of the urban children inconvenient to move the household registration back to the countryside, in order to make their “nostalgia” continue to have a place to support, and the use of rent, so that it enjoys the ownership of the house on the land, the urban children to obtain the ownership of the house on the land, there is no problem of the rental period.

Such a rule is beneficial to both the children of the town and the countryside. On the one hand, it gives town children the right to make their own choices. For young people who are no longer attached to their hometowns, they can choose to give up everything in their hometowns, legally disassociate themselves from their hometowns, and no longer enjoy any rights in the countryside. For those who wish to remain in the old home, hoping to “return to their roots” in their old age, for their children and grandchildren to “search for their roots”, they can choose to continue to use and repair their houses by paying rent, to maintain the relationship with the old home. On the other hand, for the village collective organization, the rent paid by the children of the town belongs to the village collective common ownership, belongs to the common income, can be used for all kinds of activities of the village collective project. This is also in action to implement the policy requirements of the revitalization of residential land.

### 5.3 Setting Uniform Standards on the Basis of Village Autonomy

In the preceding article, preceding paragraph mentioned the issue of the criteria for determining the “household” in “one household, one residence”, and because in practice, the village rules and regulations of each village are different, it is easy to cause the irrationality of the allocation of residential land in villages in different areas. Especially in the rural areas, is still the traditional humane society, so in order to really protect the right to use the residential base, should be based on the villagers' autonomy to set some uniform standards. Only “household” standard unified determination, can really fair and reasonable implementation of each “house”, so as to protect other derived rights. National laws and regulations do not standardize the standard of

household, but some local laws and regulations do. In conjunction with the household registration regulations of different provinces across the country, proposes the following conditions:

- 1.The subject of the application for subdividing the household must be a rural household member of the village.
- 2.After the formal divorce proceedings, divorced couples may apply for a separation of households.
- 3.If the child grows up and is ready to get married and start a family, or if he or she is financially independent and self-sufficient, he or she may apply for a separate household.
- 4.After splitting the household due to the old age and poverty of the parents, they may reapply for merger and revert to their original household registration.

The establishment of a unified standard for the division of “households” will help to solve the problem of confirming the registration of the right to use the residential land, and will better define the subject of inheritance, which is why this standard is of great significance.

### 5.4 Improving the Registration System and Clarifying the Rights and Interests of Heirs

On the one hand, when inheriting the right to use a homestead, in order to avoid disputes and quarrels, the registration department must ensure that the proof of identity and the proof of the right to use the homestead are correct. Therefore, registration departments should strengthen the identification and registration system and establish a sound information database and regulatory mechanism. On the other hand, for the protection of the rights of heirs, the construction of mediation institutions for inheritance disputes can be strengthened.

### 6 Conclusion

In rural society, the homestead is the basic material condition of life for the majority of peasants, and housing is the basis for living. In the early years of the founding of the People's Republic of China, the homestead system focused on the function of security, with farmers building dwellings on the land to solve the problem of housing. Compared to the last century, the new era of urbanization and the need for urban-rural integration construction, the policy of rural residential base reform has been steadily advancing, gradually exploring

its property function, but there are still many limiting factors. Reality and reasoning are driving the response of the policy in practice, the relevant departments have responded that the current policy allows urban children to inherit the right to use the residential base of the house. It is just that the legislation has not been followed up for the time being, and it will be necessary to promote the legislation in the future to provide a guarantee of legality. At this stage, the response of the Ministry of Natural Resources is still in the preliminary stage of improving this system, and needs to be finalized from a higher legal level.

Through legal theory, legal analysis, judicial practice case analysis, this paper examines the attributes of the right to use homestead land, the confirmation of the main body of inheritance, and the relief of the right after inheritance, and puts forward some suggestions, in which the viewpoints, arguments, and programs are still insufficient. At present, the various problems existing in the right to use the residence base are prompting the current residence base system to continue to improve, under the premise of safeguarding the rights and interests of the heirs to live in the residence, to explore and innovate the transfer methods, to effectively balance the function of livelihood protection of the residential land and the attributes of the ownership, to solve the problem of inheritance of the right to use it, and to promote the process of the reform and development of the residence base.

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