



# The Solution of the Difficulties in Inheriting the Right to Use Homestead from the Perspective of the Separation of Three Rights --Take the Example of a Married Woman

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**Abstract.** The dilemma of inheritance of the right to the use of homestead land is a major crux of the use of homestead land, which is especially obvious in the aspect of the inheritance right of married women. The inheritance dilemma of the right to use the land is related to the dual structure of rural land, the improper guidance of village rules and regulations and the marginalization of women's status. In fact, the key to solving the above dilemma lies in resetting the structure of rural land rights and realizing the separation of land property rights and member rights, and the separation of the three rights is the way worthy of attention. Based on this, for the protection of the inheritance of the collective right to use the house of married women, we should focus on solving the inheritance right to give the right to use the house land, and refine the criteria for identifying members of collective economic organizations; At the same time, the homestead withdrawal and recovery mechanism should be established, and the judicial relief mechanism for the inherited rights and interests of married women should be perfected.

**Keywords:** rural homestead-land-use-right; separating rural land ownership rights, contract rights, and management rights; heirship; maiden

## 1 Introduction

At present, the academic circle has rich research results on the "separation of three rights" of rural land, mainly focusing on the legal nature of the right to use the homestead, the qualification right of the homestead [1] [2], the relaxation path of the right to use the homestead and other aspects. [3][4] [5] Issues such as the land rights and interests of rural women and the land rights and interests of married women have also received more and more attention from the academic circle, and fruitful results have been achieved. [6] The academic circle has produced many achievements on the reform of the right to use the homestead, especially from the perspective of the separation of the three rights of the homestead. Scholars Yang Yuqing and Zhang Liheng tried to respond to the problem of the transfer of the homestead in practice by setting up the secondary usability right under the ownership. [7] Unfortunately, the above research results are in a state of ignorance in the protection of the rights and interests of the married women group. In addition to the lagging legal concept of villagers, the lack of operability of

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the law to relieve the rights of married women and the avoidance of the judicial field, the practice of the infringement of land rights of married women has not been alleviated, and the theoretical blank is also obvious. Based on this, this paper intends to deeply analyze the reasons for the dilemma of the inheritance of the right to use the married women's homestead, explain the legal principles and practical factors behind it in combination with the background characteristics of the "separation of three rights", and then shape the feasible path of the inheritance of the married women's homestead from the perspective of the "separation of three rights", so as to benefit the protection of women's rights and interests in the land reform. The top-level design and practical implementation of the legal system of homestead not only concerns the immediate interests of millions of Chinese farmers, but also has a crucial impact on China's economic development. Since the proposal of 'three rights of residence' was put forward, the research on 'three rights of residence' in the field of jurisprudence has been mushrooming. Through sorting out the legal nature of 'ownership, use, qualification rights' of the residential base, the reality of the dilemma of the reform of the 'three rights' of the residential base, and the 'three rights' of the residential base, we can see that the 'three rights' of the residential base is not only the right of ownership, but also the right of use, and the right of qualification. 'We hope that the further study of the 'three rights of residence' will be helpful and promote the stable transition of the 'three rights of residence'.

## **2 Abductive Causes of the Dilemma of Inheriting the Right to Use the Homestead of Outmarried Women**

The difficulty of inheriting the right to use the homestead of married women is actually the epitomization of the dilemma of maintaining the rights and interests of women in rural land. In fact, the emergence of the above problems is not unrelated to the identity limitation of the members of the collective economic organization, the deviation of the village rules from the legal meaning and the tendency of the marginalization of women's status.

### **2.1 Identity Limitation of Members of Collective Economic Organizations**

Rural homesteads cannot be inherited alone. According to Article 362 of the Civil Code, "the person with the right to use the homestead shall have the right to occupy and use the collectively owned land according to law, and shall have the right to use the land to build houses and ancillary facilities according to law." The ownership of the homestead belongs to the collective economic organization, so the homestead does not belong to the heritage and cannot be inherited alone, while the houses on the homestead can be inherited. However, according to the latest reply of the Ministry of Natural Resources, the house of the successor is inherited by the successor as his heritage. According to the principle of the integration of premises, the successor obtains the ownership of the house and the right to use the homestead through inheritance. Moreover,

the right to use the homestead of farmers can be inherited by the children of urban household registration and handle the real estate registration according to law.

However, with the out-married woman, she leaves the original collective economic organization, and once she obtains the right to use the new homestead, the original need is cancelled. The houses on the homestead have the right of inheritance, which leads to the contradiction of the application of the principle of "integration of premises".

## **2.2 The Village Regulations Deviate from the Legal Meaning**

Although our country has gone through the long process of socialist construction, opposing feudalism and breaking the "Four ancids", the idea of son preference is still deeply rooted and difficult to eradicate in the rural soil. The reason for this is not only the influence of the feudal monarchy for thousands of years in Chinese history, but also the fact that in the early days of the founding of the People's Republic of China, when the productivity was relatively backward, it was an unwritten rule in rural areas that the inheritance of rural property and other heritage was limited to men.

To sum up, it is the erosion of the feudal idea of "son preference" and the improper application of village rules and regulations that make the inheritance rights of rural women, especially married women, generally not effectively protected [8].

## **3 Legal Logic of Inheritance of Homestead Use Right from the Perspective of "Separation of Three Rights"**

### **3.1 Under the "Separation of Three Rights", the Right to Use the Homestead Still Adheres to the Guarantee Function**

Therefore, the reform and innovation of "separation of three rights" of homestead did not break through the bottom line requirements and basic management red line of "one house for one household" and limiting the use of homestead, and the establishment of "use right" completely belongs to the category of property meaning, which makes the inheritance path of land interests of married women more smooth and reduces the resistance from the traditional perspective. Under the policy reform of "separation of three rights", the land rights and interests of farmers are protected to the greatest extent, and the tasks and objectives under the original dual separation system are not abolished. The subjects protected by the reform not only cover the household heads in the overall sense, but also include the rights and interests subjects such as married women, making it difficult for the married women group to obtain due rights and powers from the traditional perspective. The difficulty of inheritance in the sense of property is greatly reduced [9] [10].

### 3.2 The Separate Inheritance of Homestead under the "Separation of Three Rights" can Exclude Identity Restrictions

In order to take into account the identity limitation of the right to use the homestead, the decedent can be allowed to obtain the right to use the homestead in a legal way under the special situation of inheritance. In the equal and voluntary transfer of the subject, it can still be limited to the scope of the identity of the member of the collective economic organization; Since the change of homestead use right due to inheritance does not belong to the transfer generated by equal consent, it can be relaxed, and the collective can make appropriate concessions when there is a conflict with the basic inheritance right of individuals.

The qualification right and the use right of the 'three rights' are not necessarily limited to usufruct, usufruct+credit, or membership rights; on the contrary, usufruct, credit, and membership rights can be compatible and coexist. From the pilot reform of residential base, the policy design and specific operation of the 'three rights of residential base' in Dali, Luxian, Yiwu, Deqing and other places show that, although the qualification right and the right of use in the bundle of rights of the residential base are called differently, the actual rights created can be seen. The actual power can be seen from the actual power created by them, both those who equate them with claims, such as the right to rent, such as Dali, and those who give them the power to transfer, mortgage and so on, and thus regard them as rights in rem, such as Deqing and Lu County. In addition, the understanding of the right to qualification, literally, is only the qualification to have a certain right, does not mean that necessarily enjoy a certain qualification, if it is directly understood as the right to use the land or the right to membership in the house is not appropriate. Moreover, there is no need to create 'qualification right' in the current legal system, 'qualification right' is just a tool to express the policy change from 'one household, one residence' to 'household with residence'. The 'qualification right' is only a tool to express the policy change from 'one house, one residence' to 'a home for every household', which can be expressed in various forms, such as 'the right to use the residence base', 'monetary compensation' or 'public rental housing'. Even if a person has the 'right to qualify', it does not mean that he/she has or must have the right to use the residential land. 'To activate the right of use', we should allow the right of use of residential land to be transferred and leased within single and multiple "farmers" collectives", and allow farmers to build houses on residential land to meet their own housing needs or business needs. On the surface, the right to use residential land seems to be a relatively independent right of usufruct with the qualities of other property rights, but in its essence, it is not only a right of the ground in the sense of property law, but also a land lease or legal lease with the nature of a claim.

## **4 The Path of Inheriting the Right to use the Homestead from the Perspective of "Separation of Three Rights"**

### **4.1 Clarify the Inheritance Rights of the Right to Use the Homestead**

Regarding whether the right to use the homestead can be inherited, there are different attitudes in academia and practice.

From the perspective of the succession edition of the Civil Code and the real Right edition of the Civil Code, it is an important embodiment of implementing the Civil Code and ensuring the complete exercise of the real right that the heir inherits the right to use the homestead of the decedent. In the case of "Xue Wantian v. People's Land Administrative Registration in Xifu District, Xinzhou City", the plaintiff was an urban household registration and no longer a member of the rural collective economic organization. According to Article 6 of the Opinions of the Ministry of Land and Resources, Office of the Central Rural Leading Group, Ministry of Finance and Ministry of Agriculture on the Confirmation, Registration and Certification of Rural Collective Land in 2011, It holds that the plaintiff does not lose the right to inherit the right to use the homestead of the nature of collective land because of the change of household registration, and this case has become a strong evidence that the heir can unconditionally inherit the right to use the homestead.

### **4.2 Establish the Homestead Withdrawal and Recovery Mechanism**

In order to reduce the obstacles for married women to inherit the right to use the homestead, the policy of "one household, one house" should be strictly implemented to prevent speculation, change the state of "only out but not in" of the homestead, and establish the withdrawal and recovery mechanism of the homestead. Before the establishment of the homestead withdrawal and recovery mechanism, we should firmly guard the bottom line of farmers' collective land ownership, not break through the red line of cultivated land, maintain the country's food security, and take farmers' interests as the starting point and foothold of the reform.

## **5 Conclusions and Implications**

Therefore, for the protection of land rights and interests of rural married women, it is necessary to combine the policy background of "separation of three rights" with the reality of advancing with The Times, trace the source of governance, comprehensive governance and coordinated governance, and pay attention to the popularization and interpretation of the law of married women themselves, enhance their understanding of laws, regulations and policies, and understand the path of legal relief; At the same time, we should improve the systematic and systematic laws, and comprehensively confirm the membership of rural collective economic organizations according to the actual situation of farmers' production and life. At the rural grassroots level, more attention should be paid to carrying forward the meaning of the socialist legal system with

Chinese characteristics in the new era, and creating a legal implementation atmosphere that is convenient for the implementation of laws on paper. It is believed that under the supporting operation of various policies, laws and regulations, and judicial remedies, women's land rights and interests will be further protected in the future.

How to implement the policy of 'three rights of residence', mainly from two perspectives to explore, first, from the 'into the law' path, how to design the 'three rights of residence' related legal system to make the 'three rights of residence' legalisation, standardisation, comprehensive protection of the legitimate rights and interests of the relevant subjects, and provide legal remedies for related disputes. Firstly, from the path of 'into the law', how to design the legal system of 'three rights of residential land' to make 'three rights of residential land' legalised and standardised, to comprehensively safeguard the legitimate rights and interests of the relevant subjects, and to provide legal remedies for the relevant disputes. Secondly, from the perspective of the concrete realisation path, how to 'check the omissions and make up for the defects', and clear the real obstacles of the 'three rights of residential land'. The two paths are not independent, but closely related, 'into the law' path can not be divorced from the actual, the specific realisation of the path should be in accordance with the law, the two take a two-pronged approach, and jointly promote the reform of 'three rights of residence'.

## References

1. Xie Xiao. Construction of inheritance rules of homestead use right within the perspective of Civil Code [J]. Law Science, 2022(01):128-142.
2. He Rikai. The void, Alienation and Rational allocation of the right of homestead recovery [J]. Forum of Political Law, 2020, 38(04):86-96.
3. Li, F. & Li, Z. Solving the Dilemma of the identity of rural Homestead use right: from the perspective of the separation of real right and member right [J]. Journal of Law, 2022, 39(03): 68-76.
4. the liuyang specification of rural homestead land to build the measures for the examination and approval administration. On April 3, the last visit [http://www.liuyang.gov.cn/lyszf/zfgzdt/zwdt/202011/t20201130\\_9622976.html](http://www.liuyang.gov.cn/lyszf/zfgzdt/zwdt/202011/t20201130_9622976.html). 2024.
5. Cui, B. & Yi, F. To be a farmer or a citizen: The impact of homestead ownership on farmers' citizenization intention: micro evidence from CRHPS2019 [J]. Rural Economy, 2022(08): 50-59.
6. Li, F. The transfer of homestead use right should adopt the mode of "withdrawal - transfer" [J]. Politics and Law, 2020(09):110-123.
7. Research on the system of rural Homestead Use right [J]. Journal of Southwest University for Nationalities (Humanities and Social Sciences Edition), 2019(03):116-123.]
8. Jiang, X. Research on the judicial position of rural Homestead use Right Transfer [J]. Legal Science, 2022, 35(01):191-200.
9. Song, Z. Legal Connotation and system design of "Separation of three rights" of rural Homestead [J]. Law Review, 2021, 36(04):142-153.
10. Qin, Y. & Han, S. The Attribute of rural Homestead use right and its realization: an investigation path based on the separation of three rights [J]. Human Rights Research (Journal), 2021, 24(01):51-76.

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