



Research on Systemic Vulnerabilities and Preventive Measures Against Professional Misappropriation of Residential Maintenance Funds

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Abstract. Recent years have seen a series of long-hidden incidents of embezzlement in the maintenance funds of high-rise complexes across the country, the shedding of light exposing tangled regulations, feeble monitoring procedures, and both an unclear and sometimes corrupt review process. A concentration of power from both the institution level, a time-lag from the technology layer, and lastly the lack of owner participation from the level of pure democracy, make embezzlement an inevitability and the unexpected result is a loss of their specialized funds and decreased credibility for the state itself. As fraud perpetrated by a government official, collusion with employees and shadow companies continue. It has urgent practical significance for us to build a three-dimensional prevention model of "regulatory refinement" "technology power" and "institutional innovation", clarifying responsibility division and punishment type in the legal side, enabling ledger replacement and smart contracts to provide supervision of the technology side, and establishing a market-related supervision measure on the institutional side which will protect the owners assets and further the healthy development of the modern community.

Keywords: Housing maintenance funds; Professional misappropriation; Systemic vulnerabilities; Regulatory governance; Technology-enabled solutions

1 Introduction

1.1 Research Context

Residential Maintenance Fund means "the funds paid by the owners and specially designated for the repair, renewal, and renovation of common parts and facilities and common equipment of residential buildings after the expiry of the warranty period" (see the Administrative Measures for Special Residential maintenance Funds issued by the Ministry of Housing and Urban-Rural Development). This is actually a special fund co-owned by residents, and belongs to a property which is a common-use of pubic property. In the Anglo-American and some western countries, associations of owners such as Homeowners' Associations (HOA) are accept to some extent theoretically and practically, as quasi-judicial and quasi-public organizations combining the

functions of judiciary contract and public governance.^[1] In China's recent economic history, there have been many cases of misappropriating the residential maintenance fund in various places this year, exposing loopholes in the legal system, supervision and audit system. This paper studies the inextricably linked three core questions: What exactly are residential maintenance funds within the legal framework of our laws, and why are they especially prone to misappropriation; At what level do systemic deficiencies exist in the current legal system, regulatory system and operational system which are prevented from playing a role to stop such embezzlement; How should the existing governance foundation modeled on balance between efficiency and regulation be re-adapted in the context of facing newer, faster and ever-able artisans of newer technologies who operate new markets? In this context, systematically revealing the mechanism problems of management that give rise to corruption and loss of funds and establishing preventive mechanisms are of great practical significance for the country and for society.^[2]

1.2 Research Significance

Theoretical Significance. In terms of theoretical contribution, this paper attempts to go one step further theoretically on the basis of existing theoretical frameworks, and try to combine the criminal jurisprudence, the public finance theory and the property management theory to construct an interdisciplinary analytical framework to study the “quasi-public fund” nature of the occupational misappropriation of residential maintenance funds.

Start from the perspective of criminal law, using Professor Ouyang's classification of right of control (C1: absolute independent control; C2: relatively independent direct control; C3: relatively independent indirect control) to see,^[3] this study dissects the mechanisms underlying corrupt practices. This research shows that maintenance fund administrators enjoy simultaneous control over approval of project fundment proposals together, enabling a garden variety of criminal ‘risks’ subsections tagged abuse of authority. In public finance, lessons learnt from Washington State legislation to prevent similar situations are explored,^[4] focusing on fiscal security strategies of informing disclosure, criminal recovery of assets, and public interest litigation. Based on this it diagnoses systemic-technical-cultural disfunction risks in residential maintenance funds. A trinity framework of systems technology and mechanisms is suggested to protect against vulnerabilities resulting from regulatory disconnection between pubic funds and financial systems.

Practical Implications. Engaging in a fruitful comparative dialogue between the residential maintenance fund and HOA governance abroad not only reveals the institutional predicament of embezzlement of public housing funds in developing economies but also offers a comparative institutional example for improving the accountability processes and transparency policies of quasi-public management organizations.

1.3 Literature Review

The research on residential maintenance funds and their corruption and risk at home and abroad, in general, can be divided into three categories. There are criminal law-related papers which primarily study the engagement constituents and the scope of subjects of crimes such as embezzlement of public funds and public property and the misappropriation of public funds. There are also papers from the perspective of finance, which study how to optimise fund supervision models, especially how to use law to reinforce information disclosure and accountability. Some scholars think it is best to promote the introduction of a third-party audit mechanism to ensure transparency and credibility. Others even study the new technical means called "fiscal risk prevention technology" in academic papers, and using blockchain technology is also one of the tracking breakthrough points for fund flows. There are also papers from the perspective of property management theory, which study the functional positioning of owner self-governance organisations and the role conflict in fund management, and some literature indicates that insufficient participation from owners and poor decision-making mechanisms contribute to the security risk of funds being embezzled. There are also some analyses in the literature at home price that are reflections on lessons from comparisons of overseas systems from the perspective of comparative law, which also have certain value for the development dividends in China's residential maintenance fund management. However, for example, the theoretical research of this paper is mainly from these papers, and the existing research methods in the papers mostly adopt a single discipline, not able to clearly see the systemic vulnerabilities, and are not good at start to explore the path of technological empowerment, empowerment and institutional innovation.

1.4 Research Methodology

Methodologically, the paper overall based on case study as the organizing principle, case comparison and theoretical study as the means of enquiry. We use the case study method to use Zhou Xiaojian as an example of methodology and comb relevant criminal judgments and prosecutorial indictment, and explore the typical mode of fund misappropriation. Through the comparative method, we analyze the government led management mode and marketization management model together, draw on the experience of the apartment maintenance system in other countries. Finally, through empirical research, the relevant data of Ministry of Housing and Urban-Rural Development and procuratorate relevant reports are integrated together, the severity of the vulnerability and the achievability of taken measures can be demonstrated.

2 Analysis of Causes of Occupational Embezzlement and Fraud

First of all, an imbalance in the cost-benefit structure means that occupational embezzlement is found quite frequently in certain industries. From a criminal economics perspective, it is precisely these imbalances that give rise to embezzling behaviour. The incentives to cheat come not only from the incentives/ cost-benefit balance considered

by the individual as to whether to embezzle, but also from the lazy resort to opaque information and neglected accountability that effectively locks those fund flows into a black box. The blur in manager's fiduciary role invites a collective presumption of lower subjective cost of crime.^[5] In this respect, the disparity with the anticipation and contingency of being captured and punished, increases the likelihood that opportunistic crime will occur under the rational calculation.

Secondly, a number of institutional loopholes exacerbated these incentives. The failure to separate project approval and funding disbursement authority resulted in C2 and C3 overlapping occluding control of such funding, resulting in individuals like in Zhou Xiaojian case forging project initiation documents and transferring funds at the same time. Certain areas still relying on paper-based receipts and offline audits, with information synchronisation between systems taking time, and digital platforms in a few cities not having real-time monitoring capability. Audits often reduced to 'tick-box' compliance regulation where annual reviews focusing on amount verification and not project authenticity. Cumulatively, these institutional factors result in an irrationally persistent underestimation of the subjective cost of crime in relation to objective institutional environment, thereby reinforcing skewed cost-benefit asymmetry.

Thirdly, non-transparent processes have resulted in operational compliance issues. Firstly, owner participation has been virtualised, as the majority of communities do not hold regular owners' meetings. Very few owners participate in selecting who will pay for the projects, and the one disclosed information channel can easily go unnoticed. Secondly, disclosure is delayed whereby some projects only disclose expenses after they have been implemented which creates the opportunity to report a larger inflated cost.^[6] In the Zhou Xiaojian case, the acceptance procedures had become routine based on what was accepted by the acceptance team. The acceptance team accepted fake documents and did not verify whether they were accepting fraudulent projects on-site.

3 Loopholes in the Residential Maintenance Fund Management System

3.1 Legal Loopholes

Firstly, the delimitation of rights and obligations remains uncertain. Article 281 of the Civil Code states that the "fund belongs to" the "dormant owners," but does not say under what conditions, for what duration and in what liability they may refuse government custody for self-management by the homeowners' committee. Just as the Residential Special Maintenance Fund Management Measures similarly lack a statutory deadline for disbursement, which brings about "dormant power" (p. 56), so does the headache of providing for a "timely" decision aptly described by Pienaar and Horn's (2022) "twin absence of time-bound responsibilities". Also, in regard to existing statutes governing the 'residential special maintenance fund', our present body of laws is replete with ambiguities that have spawned a plethora of disputes in practice. The development will tend to illustrate more characteristics of illegality and fraud when there is a deficit in the legal principles entrusted to guard the interior of the

fund, especially the discrepancies in rules regarding collection, ascertaining the items on which funds are to be used, and also that of supervision between the last mentioned Act and local legislation.^[7] Secondly, there is a conflict of regulations: Article 278 of the Civil Code and Article 22 of the Residential Special Maintenance Fund Management Measures differ on consent thresholds, leading to operational confusion at the grassroots; and third, penalties are not stringent enough. Pienaar and Horn state “the last thing the manager of the shared asset wants is for the deterrents on him to be sufficient just to outweigh the possible benefit to him if he acts dishonestly”, and they argue that deterrents “have to be high enough to outweigh the possible gains plus disgrace of having a black mark on his name for the rest of his life”, or the administering of fiduciary duties reduces to slogans.^[8] Lin Cheng's three-pronged disciplinary approach of increasing the multiplier effect of the respective penalties, reducing the threshold of requiring criminalisation, and qualification bans is a direct result of South Africa experience.

3.2 Regulatory Loopholes

Three serious problems trouble the supervision of the residential special maintenance fund: first, fragmented oversight. It is unclear which of the tripartite managers—housing authority, finance department, or sub-district office—has primary jurisdiction, dividing the responsibilities of all three or others besides into a number of “grey interfaces”. The same “regulatory vacuum” described in South African HOA research, multiple directives giving rise to a “city property management entity” without any ultimate accountability, is present in another form here.^[8] Our proposed solution of a “single lead agency + collaborative checklist” fills this vacuum. Second, there is a lack of third party oversight. In our current system, routine supervision is essentially left to homeowners’ committees and property management companies that have a direct financial interest in their supervised funds. Audit review by third parties lacks mandatory cycles and public disclosure requirements, and is often spot checked once “as deemed necessary” at a too-limited sampling. It should have a wider scope. Here’s the experience of California HOAs:^[1] Only by reclassifying third-party audits from an “optional service” to a necessary statutory obligation—and by implementing results disclosure and auditor rotation to eliminate internal conflicts of interest—can these ties be severed. Thirdly, the regulatory practices in operation today are archaic, with some cities still employing pencils and paper ledgers to record the transactions in these accounts. Moreover, the information in these ledgers may not be reflected in the results reported to government authorities for weeks or months. Following on from Florida’s reform legislation mandating that reserve funds be audited by a third party: Digital regulatory “tools” will necessitate government investment in a multi-sourced fund supplemented by “state nuclear power stations + developer prepay + owner supply”^[9] of dollars to overcome cost constraints.

4 Typical Manifestations and Multi-dimensional Harms of Professional Misappropriation

4.1 Typical Manifestations of Professional Misappropriation

Government-led Fraud: Forging Invoices to Divert Funds. The first category usually involves people in housing security, property management, and related departments who abuse the power of their position. By controlling project initiation, fund applications and payments they illegally transfer improvement and maintenance money to their own or friends' accounts.^[10] According to Article 384 of the Criminal Law, the relevant crime is the misappropriation of public funds by "abusing relatively independent direct control" (C2). The main methods are as follows: (1) Forging maintenance fund receipts, as demonstrated by Zhou Xiaojian who, to issue false receipts, used a forger's housing department seal (if obtained directly, the seal is reused, else it is often forged);^[3] (2) Generating personal payment codes to receive maintenance fees from owners without passing through the company's account; (3) Falsifying the records of debit and credit balances in company's accounts to conceal the trail of funds (Dong'an County People's Procuratorate, 2019). According to Articles 382 and 383 of the criminal code, public officials that use their position to produce fraudulent receipts or set up their own payment codes in order to divert funds from maintenance expenses commit the crime of embezzlement, with the added severity of the involvement of a huge number of people and a huge amount of funds in the process of committing this crime leading to punishment of fixed-term imprisonment of not less than ten years or life imprisonment.

Employee Collusion in Embezzlement: Duplicate Billing and Kickbacks. The second variant takes place in property management firms or custodial agencies. Finance staff responsible for authorizing project work conspire with their operations colleagues who are tasked with executing the work. They jointly siphon off special residential-maintenance funds through pot-splitting, workload-padding, and phantom work.^[11] The collusion of finance personnel who have the privilege of C2-level control with operating personnel who have the privilege of C1-level control, to take money in this way (duplicate billing, kickbacks), takes primary form in two methods: (1) splitting up a single project into several reimbursement items, (2) inflating quotations on such projects and splitting the kickbacks with the contractor. Erosion of respect for legal order and legal rights. The operating embezzlements mean that owners become unwilling to pay for its use lawyers fees at law, adverse selection.

Shadow Companies Misappropriating Public Funds: Backroom Manipulation by Public Officials. The third type has public officials (such as people in the housing department, or owners' committee members) obtaining qualifications for tenders and duping people out of money by controlling "shadow companies" (registered companies that they control in fact). This meets the legal definition for abuse of "relatively independent indirect control (C3)". Patterns of operation involve: (1) Public officials

provide influence to obtain contracts for shadow companies through obscure tendering processes; (2) Shadow companies falsify prices; (3) Money is wire transferred to themselves through raised invoices, and a closed loop of stealing consisting of “booked expenditures and off-balance-sheet returns” is made.^[3] Such practices make very difficult the protection of social rights, property owners being in general less able to obtain the legal accountability of shadow companies and exposing capital to the possible misappropriation and damage. Public officials who subjugate shadow companies for the purpose of getting contracts, accomplices in generating false invoices, at the same time commit, from a legal perspective, the crimes of Article 382 of Criminal Law on the one hand (embezzlement), and Article 205 (fraudulent invoicing) on the other. Professional misappropriation of residential maintenance funds is not an isolated crime of a few courts in particular regions, but an epidemic of the same kind which constantly recurs in sectors where public and private interests are transparent, and where there are bodies of governors and bodies of internally governed powers existing alongside.

4.2 Multidimensional Harms of Professional Misappropriation

Widening the Gap in Public Maintenance Funds, Resulting in Direct Economic Losses. Professional misappropriation of public funds leads to the loss of public maintenance funds, increasing the already difficult situation of community financing. The consequences of individual cases have been particularly severe: after the Zhou Xiaojian case, the shortfall in the maintenance fund for one year in Dong'an County township was further widened, and in several aging communities, some of which could not afford to repair problems in time, the long-term accumulation of risks made things worse, such as “shutdown” of lifts and “leakage” of roofs and so on. For property owners, the misappropriation of maintenance funds means that future owners will pay additional refurbishment costs and upgrade costs, which will destroy the value of the community.

Indirect Governance Crisis and Erosion of Government Credibility. The perniciousness of embezzlement as compared to other theft lies in what it does to the credibility of the government and the structure of community trust. After scandals have come to light, people have lost their faith in local governments, and as a result become more reluctant to pay for services.^[12] If maintenance pilots used for diversion do not use, delay responsibility, owners’ disbelief appears, the payment rate falls from the relatively high point to the low level, and replenishment pool difficulty, extreme even to the low leave barely have a little, can’t afford to go to maintenance to fix the outside facade or, powerless to shut down lift, flat bubbles out waves, flat goes to Rights protection wave. Also taking the authority of the use of funds also weakened owner of owner’s committee and property company trust, making internal discord more frequent and destructive.

5 Preventive Pathways Through Three-Dimensional Reconstruction: System-Technology-Mechanism

Governments globally face a number of governance gaps and management problems about the boundaries of responsibility and the administration of funds for residential properties. This problem arises because the management of funds for the maintenance of special residences occupies a hybrid public-private governance space.

5.1 Clarifying Boundaries of Authority and Responsibility

A unified national framework for residential special maintenance fund management should be established through the implementation of regulations that provide specific guidelines on fund collection, allocation and oversight, in order to reduce the number of legal disputes and ambiguities.^[7] Residential Special Maintenance fund Management Measures: Funds should be handed over to a special account within 30 days after the establishment of the homeowners' committee; the government only retains supervision facilities while the homeowners' committee will decide usage; if there's no homeowners' committee, the sub-district office shall agree nothing for more than a year.

5.2 Strengthening Legal Sanctions

Another way of intensifying penalties is to effectively raise the cost of non-compliance to a level that makes deterrence possible.^[13] Lower the felony threshold, and clarify whether conspirators are jointly liable: all participants in any conspiracy are horrid felons; all enterprises involved shall have their qualifications revoked; where confiscation of illegal gains is otherwise insufficient, or vindicates the criminal, then joint compensation as punishment shall be imposed. Define and raise administrative penalties: for non-criminal acts, then public officials shall be permanently demoted or fired. Illinois' Condominium Act usually contains "exemption clauses" to limit directors' exposure to personal liability. Overall case law states that, such a clause will be breached in its entirety whenever a director somewhere breaches his fiduciary duties or engages in intentional misappropriation. Thus, the offending directors remained personally liable for both civil damages and fines.^[14] Building on this approach, we could add "exceptions to indemnity" provisions into residential maintenance fund administration codes: in the event a manager or committee member were found to have embezzled fund money, they could not claim indemnity under any bylaw or contract provision and must bear any punitive damages personally and would thereby be automatically ineligible for re-election—an extension of civil deterrence to criminal liability.

5.3 Refining Supporting Regulations

In the sudden emergency, such as the elevator not running normally or all days, or leaking the roof of the project, the system stipulates that the property company shall

submit emergency use application materials within 24 hours, and should be coordinated in the sub-district office and approved within 48 hours. Exceeding 500,000 yuan can also be done in accordance with a simplified bidding procedure, and if a third party institution must be invited to conduct acceptance inspection, they must also disclose it immediately. If the balance in the account is less than 30% of the collected amount at the beginning of the fund-raising, within three months, the owners' committee shall be organized to formulate a tiered replenishment plan according to the floor area, and those who are willing to replenish are signed and approved. The subsidy to residents who are suffering difficulties is an "independent cycle of use-subsidy" system. At the same time, a quarterly recording system for income and expenditure of the fund, project acceptance report and other relevant information will also be stipulated. If the record is delayed and untrue, the property management company shall bear responsibility, and the person authorized shall pay double. Thus, emergency repairs and routine repairs have the same information to transparent traceable.^[15]

6 Conclusions and Outlook

The research found that professional misuse of residential maintenance fund was caused by a network of various interlinked factors, stemming from 'holes' in laws, regulations and work processes. Forms included fraud by government officials, collusion by employees and shadow companies, leading to large scale loss of state assets and reputational damage to government. That said, we propose a 3 dimensional anti abuse model: firstly reinforcing the law, so that the right and the wrong is clearer, but putting in harsher sanctions; reinforced supervision with blockchain or smart contracts and market methods. It fills the 'holes' in the system, for protection. We have disclosed those in our paper.

Limitations: The research is limited in so far as our study is mainly centred on the residential maintenance fund sector, we thus didn't deal thoroughly with the wider implications in asset management and other related sectors. Our sources were based on published papers mainly and policy studies, and did not holistically investigate other data or directly work with valid cases, nor hinted to the reader how and where to apply various parts of the law. Legal applicability was not linked correctly citing other law papers as an example. We didn't use and other fields being anchor researchers in our applied work in law.

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