



JONES DAY  
**COMMENTARY**

## RESOLVING THE MINOR PROPERTY RIGHT PROBLEM IN CHINA

According to the principles of the Constitution Law and other laws of the People's Republic of China, all land in China is owned either by the State ("state-owned land") or by agricultural collectives ("collective-owned land"). Private entities, such as individuals and corporations, are not permitted to own land. That is, private entities cannot obtain legal "title" to the land, and only under certain conditions can they acquire the right to use the land.

Land in rural or suburban areas is generally collective-owned, meaning that by law it cannot be used for industrial or commercial purposes. Accordingly, real estate developers may not develop collective-owned land, unless it is converted into state-owned land and compensation is paid to the agricultural collectives for its conversion.

In recent years, however, a significant amount of the collective-owned land has been developed by village and township governments, which often disregard the law by erecting residences and buildings to be sold

for profit. Recently, more and more illegal houses and buildings have been erected on collective-owned land. The prices for such illegally built homes and buildings are much lower than those for legally permissible developments. Due to this price advantage, many urban citizens have chosen to take the legal risk and purchase illegal dwellings.

### MINOR PROPERTY RIGHT HOUSES

Any residential dwelling constructed on collective-owned land and sold to an urban citizen is referred to as a "minor property right house." This term is misleading because by law the Chinese government does not recognize minor property right houses, and therefore, it is not a true property right. Consequently, the so-called owners of minor property right houses cannot acquire Land-Use Certificates or House Property Certificates from the relevant authorities. Instead, the village and township governments involved enter into a contract with the purchasers and issue a named

certificate to confirm the so-called “property right” of the purchasers. But, in fact, the development activities of the village and township governments are prohibited by law.

In China today, the amount of land on which minor property right houses have been built has rapidly expanded, making the purchase of minor property right houses somewhat of a phenomenon throughout China.

## LAWS AND ADMINISTRATIVE REGULATIONS: THE LACK OF LEGAL BASIS FOR MINOR PROPERTY RIGHT HOUSES

**Property Law.** Under the PRC Property Law, the owners of rural land-use rights have the right to possess and make use of their land. The law clearly states that they can construct dwellings and auxiliary facilities on the land. The PRC Property Law does not state, however, whether minor property right houses are lawful or not.

**Urban and Rural Planning Law.** Under the Urban and Rural Planning Law, developers must obtain Country Construction Planning Certificates for any construction on rural land. Generally, minor property right houses are not included within the scope of rural planning. As a result, developers of minor property right houses cannot acquire the necessary Country Construction Planning Certificates. Moreover, the governmental authorities have the right to demolish any unlawful construction.

**Land Management Law.** The Land Management Law prescribes that collective-owned land cannot be sold, transferred, or leased for nonagricultural construction purposes.

Apart from these laws, other administrative regulations restate the above legal principles, e.g., *Opinions on Enhancing the Management of Rural Housing Land* [Guo Tu Zi Fa (2004) 234] in 2004 (Circular 234), etc.

**Updated Recent Policies from the Central Government.** In December 2007, the State Council issued a *Notice Regarding Strictly Implementing the Laws and Regulations of the Rural Collective Construction Land* [Guo Ban Fa (2007)] (“Notice 71”). Notice 71 emphasizes that the rights to rural land can

only be allocated to rural citizens, and urban citizens are not entitled to purchase any land or houses in the countryside. Furthermore, use of collective-owned lands by entities or individuals for real estate development is prohibited.

In July 2008, the Ministry of Land and Resources (“MLR”) issued a notice regarding the “minor property right house” issue. The notice was entitled *Notice on Promoting the Housing Land Use Right Registration and Certificate Issuance* [Guo Tu Zi Fa 146] (“Notice 146”). In Notice 146, the MLR ordered its local branches to issue Rural House Lands Certificates to the owners of rural land. Notice 146 also requires that all such certificates are issued before the end of 2009.

Notice 146 reiterates the policies and principles prescribed in former laws and administrative regulations. Under Notice 146, urban citizens who purchase a minor property right house cannot obtain any land-use rights, and the government will not accept applications from urban citizens for land-use right registration and certificate issuance.

## IN PRACTICE

According to statistics maintained by the National Bureau of Statistics, it is estimated that as of June 2007, the total area occupied by the minor property right houses in China was more than 6.6 billion square meters. Minor property right houses are sold in virtually every region of China and are especially common around major cities including Beijing, Shanghai, and Shenzhen. Although PRC law prescribes that unlawful houses be demolished, the attitudes of local governments toward enforcement of these laws is inconsistent.

For example, Xi’an undertook rigorous efforts to enforce laws against minor property right houses. The governmental authorities demolished a large number of minor property right houses and punished the real estate developers involved. Most other cities (e.g., Beijing) took a more moderate approach to enforcement. In particular, the Beijing authorities took action to prevent ongoing construction but took no action to demolish existing unlawful houses. It seems that the local governments are waiting for further guidance from the central government.

## OPPOSING OPINIONS: MINOR PROPERTY RIGHT HOUSE SHOULD BE LEGALIZED

The minor property right house phenomenon has caused much heated debate. Developers and owners ardently hope that the government will issue new policies to acknowledge the legal status of such property. A significant number of scholars believe the Chinese government should legalize the minor property right house. One member of the National Committee of the Chinese People's Political Consultative Conference stated that minor property right houses should be recognized.

## CONCLUSION

The minor property right house phenomenon stems from China's urban-rural dual land system. Its emergence and rapid development are by no means coincidental. Nowadays, it is commonly considered that real estate prices are outside the acceptable range for most citizens. As a result, many have decided to take the legal risk of purchasing unlawful homes in order to meet their most basic needs.

An important legal saying for the government to consider is that "the law will not punish the majority." The attitudes and actions of the government with regard to the minor property rights issue will affect the well-being of many people in China. The minor property rights issue places the government in a dilemma. If the government treats minor property right houses as unlawful and demolishes them by force, it could lead to dramatic social conflict. On the other hand, if the government takes no action, legal violations will continue.

Essentially, the phenomenon stems from the current state of the real estate market; a majority of ordinary citizens cannot afford the cost of lawful properties. The government plays a central role in the development of the real estate market and should be expected to issue new rules to address the issue in the near future. Although the content of these rules is still unclear, many agree that in rectifying the situation, it would be unfair to force ordinary citizens to bear the entire burden for legal violations that have occurred. Local governments, which receive large amounts of money in the process of granting and transferring land, should also be held accountable.

## LAWYER CONTACT

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