



## The historical evolution and acquisition, circulation and withdrawal of rural homestead system in China

Shuwei Wang<sup>\*1,2</sup> , Huimin Liu<sup>3</sup> 

<sup>1</sup>Shanghai University of Political Science and Law, School of Law, Shanghai, China; 3356015248@qq.com

<sup>2</sup>Shangjian Law Office, Songjiang District, Shanghai 201600, PR China.

<sup>3</sup>Liaoning University of International Business, School of Economics, Dalian, China; 506126842@qq.com

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### Abstract

The land system of China generally falls into three positions, namely agricultural, land conversion, and urban land use. But, the land system of China's rural area is quite different from the rest of the world. This unique land system ultimately contributes to changing the countryside. After forming the new China, the Land Reform Law of 1950 paved the way for creating land ownership for farmers. But, implementing the rural homestead system in China's countryside was not an easy task because of considering the issue of the rural economy and farmers' rights. With the passage of time, China's land reform policy regarding the rural homestead system gets matured. Despite numerous efforts from the government side to effectively apply the right to use the rural homestead, there are many factors work that hinder the process. This paper tries to draw attention to the issues like the uncertain subject of homestead use right, restricted circulation of homestead use right, withdrawal of homestead use right, and others, along with the evolution of the homestead system in China.

## 1. Introduction

After the founding of new China, the rural homestead system evolved and has been continuously in practice and matured. Homestead ownership in China over the last three decades went on a transition from private to public ownership [1]. The evolution process of the rural homestead system in China can be divided into three stages (Table 1). The first stage was the beginning of the founding of new China from 1949 to 1961, where it was necessary to develop the rural economy in order to protect the rights of farmers living, promote rural economic development, and at this stage, the homestead was still in private ownership. The second stage was from 1962 to 2006; during this time period, the ownership and use rights of the rural homestead were separated. And the third stage is from 2007 to now, in which the ownership, use right, and qualification right of the homestead are separated, and endowing the homestead with more property ownership.

**Table 1.** The rural homestead stage system of China and their outcomes

Stage	Time	Outcome
First	1949 to 1961	<ul style="list-style-type: none"> <li>• homestead privatization stage</li> <li>• introduced Land Reform Law</li> <li>• abolished feudal land ownership</li> <li>• ensured land ownership of farmers</li> <li>• production tools changed from private ownership to public ownership</li> </ul>
Second	1962 to 2006	<ul style="list-style-type: none"> <li>(1) collectivization of homestead (1962-1981) <ul style="list-style-type: none"> <li>• end of the privatization stage and begin of the collectivization stage</li> <li>• restrictions on transferring the right to use the homestead</li> </ul> </li> <li>(2) collective ownership system of homestead (1982-2006) <ul style="list-style-type: none"> <li>• formulation of the Regulations on the Management of Land</li> <li>• introduction of “one family and one homestead”</li> <li>• restoration of property attribute of the rural homestead</li> <li>• strengthened laws to prevent the waste of land resources</li> <li>• Land Management Law promulgated in 1991</li> <li>• imposed restrictions on transferring the use right of the rural homestead to urban residents</li> </ul> </li> </ul>
Third	2007 to now	<ul style="list-style-type: none"> <li>(1) Reform and exploration of usufruct of homestead (2007-2015) <ul style="list-style-type: none"> <li>• adoption of the Property Law in 2007</li> <li>• usufructuary right holder got three rights to possess, use and benefit</li> <li>• guaranteed the usufruct of the homestead</li> </ul> </li> <li>(2) “three rights separation” system of homestead (2015 to present) <ul style="list-style-type: none"> <li>• revitalization of homestead and homestead circulation began locally</li> <li>• CPC Central Committee and the State Council approved farmer’s qualification right of homestead in 2018</li> </ul> </li> </ul>

### 1.1 Homestead privatization stage (1949-1961)

In the early years, the People’s Republic of China lagged behind the rest of the world in all aspects of strength, especially in economic development. Therefore, in order to achieve rapid economic development, new China formulated the first five-year plan and the second five-year plan during this period. In 1950, China promulgated and implemented the Land Reform Law, which abolished feudal land ownership and pointed out that farmers’ land ownership was implemented in rural areas of China [2], and the land was uniformly and reasonably distributed to farmers. The law also explained that the land could be freely transferred, bought, sold, leased, or inherited. By the end of 1952, land reform had been successfully completed in all rural areas except Tibet and a few other areas. Combined with the land reform in the old liberated areas, more than 300 million landless peasants and those with little land were allotted about 700 million *mu* (Chinese land measure) of land and other means of production. The victory of land reform completely eliminated feudal land ownership, liberated agricultural productive forces, further consolidated the alliance of workers and peasants, and created conditions for the recovery and development of the national economy, national socialist industrialization, and agricultural socialist transformation.

In December 1951, the Central Committee of the Communist Party of China (CPC) adopted the Resolution on Mutual Aid and Cooperation in Agricultural Production (draft), which proposed to protect the enthusiasm of farmers’ individual economy and mutual aid and cooperation, encourage and advocate farmers to carry out mutual aid and cooperation in rural production. After the land reform was basically completed, China soon entered a period of mutual assistance and cooperation, during which farmers still owned the ownership of rural homesteads. In July 1955, the Central Committee of the Communist Party of China adopted the Resolution on Rural Cooperation, which proposed that China should realize the establishment of primary agricultural production cooperatives throughout the country before 1958. However, as farmers actively responded to the call of the Central Committee of the CPC during this period, the enthusiasm for land reform was high, and China’s agricultural socialist transformation was completed ahead of schedule at the end of 1956. At that time, rural homesteads, farm tools, and farm animals had all been collectively owned, and production tools and means of production had changed from private ownership to public ownership. However, there were no documents and policies in this period that clearly stipulated the ownership of rural homestead, so rural homestead could still be owned by peasant households by default.

## **1.2 Separation stage of homestead ownership and use right (1962-2006)**

### **1.2.1 Collectivization of homestead (1962-1981)**

On September 27, 1962, the tenth plenary session of the Eighth Central Committee of the Communist Party of China adopted the Revised Draft Regulations on the Work of Rural People's Communes, which stipulated the nature, organization, scale, and management of the people's communes. The production teams shall own all land within the scope of the production teams, and all land owned by the production teams, including members' private plots and hills and rural house sites, shall not be sold or leased. However, the house owned by the member shall still be owned by the member, who may freely sell or rent the house. In addition, article 152 of the Property Law allows the homestead users to occupy and use collectively owned land and make houses and create other facilities for them within the law [3]. Therefore, the privatization stage of rural homestead also ended with the birth of the draft amendment, and the collectivization stage of rural homestead began.

In March 1963, the concept of the right to use homestead appeared for the first time, making some supplementary provisions for members' homestead. However, farmers were not the only group allowed to own homesteads at this time. As long as they belonged to production facility personnel, they could apply for homesteads according to the process. This supplementary regulation notice confirmed the homestead transfer policy of "land for homestead", and initially formed the system model of the separation of ownership and use the right of the homestead. Later, on August 28, 1963, the Supreme People's Court issued opinions on several issues concerning the implementation of Civil Policy (Revised Draft), which made more detailed provisions on disputes over the right to use homestead. According to the guideline, members' homesteads, including empty homesteads with and without buildings, shall be collectively owned by the production teams and shall not be rented or bought or sold, but shall still be owned by individual households for long-term use. In the second paragraph of article 2 of the 1963 notice of the Central Committee of the CPC stipulates that "the attached objects on the homestead, such as houses, woods, shed, pigsty and latrines, shall always be owned by the members, who have the right to buy, sell or lease houses. After the house is sold, the right to use the homestead is transferred to the new owner, but the ownership of the homestead will still be owned by the production team" [4]. The commune members should not occupy the cultivated land by expanding the courtyard wall or the homestead on the pretext of building houses. Those who have already expanded their occupation and encroachment must withdraw. To protect cultivable land from rural housing, the state has imposed restrictions on transferring the right to use homestead. Addressing this issue, article 3 of the State Council's Emergency Notice on Preventing Rural Housing from Seizing Cultivated Land in 1981 stipulates that members who have been assigned to own a homestead can only have the right to use it except for renting, selling or transferring or building houses without authorization [5].

For the acquisition of the right to the use of a homestead, the household shall first apply for it, and the production team shall make a unified plan and solve the problem after discussion and approval by the members' congress. However, the idle land shall be used as far as possible, and the cultivated land shall not be occupied. In case of occupying the cultivated land, it shall be reported to the people's committee of the county for approval according to the provisions of "Article 60". The announcement of the Supreme People's Court's opinion makes the system of the right to use homestead clearer, but also emphasizes the collectivization of a rural homestead once again. Then the 1975 constitution stipulates that the state protects the ownership of the citizens and their earned income, savings, houses, and other means of subsistence. It also confirmed an economic system based on three levels of ownership and teams. The 1978 constitution made similar provisions. At this stage, the homestead system that the ownership of homestead belongs to collectives and the right to use homestead belongs to farmers has been confirmed by the constitution and relevant laws, but the conditions and procedures for farmers to obtain the right to use homestead are still not clear and specific [6].

### **1.2.2 Mature stage of collective ownership system of homestead (1982-2006)**

With the development of the economy and culture, the state's protection of citizens' personal property is gradually restored and strengthened. At the same time, with the beginning and deepening of reform and opening up, people's living standards are constantly improving, and rural farmers' enthusiasm for building houses is also rising. As a result, misuse of farmland construction and other irregularities arose. Therefore, the urgent notice of the State Council on Preventing the Encroachment of Farmland by Rural Housing Construction on April 17, 1981, emphasized once again that the land owned by rural communities and teams should be owned by collectives, and the land used for rural housing construction should be unified in planning, rational layout, and economical use. In 1982, The State Council formulated the Regulations on the Management of Land used for building houses in villages and towns, which proposed "one family and one homestead", further standardizing the behavior of using rural land for building houses. In the same year, the State Council promulgated the "Notice of the General Office of the CPC Central Committee and the General Office of the State Council retransmission Secretariat Rural Policy Research Office of the Ministry of Urban and Rural Construction and Environmental Protection on effectively Solving the Report on the Misuse of Cultivated Land for Building Houses", which means that the existing homestead

and vacant land can only be used to solve the problem. At this stage, the property attribute of the rural homestead was restored to some extent. China has further strengthened the protection of the right to use rural homestead, and also further strengthened the restriction of the right to use rural homestead, which is still mainly to guarantee the right to live of farmers, but also to prevent the waste of land resources. To restrict the circulation of the homestead, the Administration of Rural Housing Land 1982 of its article 15 of the second paragraph stipulates that those who previously sold or rented house cannot reapply for homestead [7]. The same statement has been restated in article 38 of the Land Administration Law 1986 [8].

On June 25, 1986, the 16th Session of the Standing Committee of the Sixth National People's Congress adopted the Land Administration Law of the People's Republic of China to further solve the problems of unjustified occupation of cultivated land and misuse of land. Since then, On January 4, 1991, China promulgated the Implementation Regulations of the Land Management Law, which stipulated in detail the application procedures for the use of the homestead. So far, the conditions and procedures for the use of homesteads in China are relatively sound, and the system of homestead use right is gradually getting matured. In 1997, to protect cultivated land, the CPC Central Committee and the State Council issued the Circular on Improving Land Management and Effectively Protecting Cultivated Land, stipulating that the approval and administration of construction land should be further tightened. At the same time, this is the first time that "one household, homestead" was formally proposed in the form of central documents. In 1999, the State Council issued the Notice on Strengthening the Management of Land Transfer and Prohibiting Speculation in Land, which prohibited urban residents from purchasing homestead in rural areas, and the transfer of the right to use the houses on the homesteads was also restricted. The houses on the homesteads could only be transferred within the collectives belonging to the homesteads. In 2004, the Decision of the State Council on Deepening Reform and Strict Land Management emphasized once again that the use right of rural homestead should not be transferred to urban residents. The decision continues to maintain the residential security nature of rural homestead.

### **1.3 "Separation of the three rights of homestead" stage (2007 to present)**

With the continuous development of the country's industrialization and urbanization and the continuous improvement of the national economic level, the circulation of the homestead is restricted, and the people occupy the farmland to build houses, and other problems are increasingly becoming prominent. After the Property Law of 2007 clarified the legal attributes of the homestead, restrictions on homestead circulation and various land management problems were alleviated to some extent. Later, Chinese laws also explored the system construction of the homestead system, gradually strengthened the management of land, and issued a series of relevant policies and regulations.

#### **1.3.1 Reform and exploration of usufruct of homestead (2007-2015)**

The Property Law was adopted at the seventh session of the Fifth Session of the Tenth National People's Congress on March 16, 2007, which clearly defines the right to use homestead as usufructuary right. That was the first time the state clarified the legal attributes of the homestead. According to Article 117 of the Property Law of the People's Republic of China, a usufructuary right holder has the right to possess, use and benefit from realty or chattel owned by others. Article 152 stipulates that the owners of the right to use the land owned by collectives have the right to occupy and use the land in accordance with the law to build houses and ancillary facilities. In the two law regulations of "Property Law" show that although the property law gives the usufructuary right holder three rights to possess, use and benefit, but for the right to use house sites, the law only clears the possession and uses of the two rights, and to a certain limit in the scope of our rights, namely the limited to the construction of residential and ancillary facilities, the right to use homestead is not explicitly granted. In 2013, the Decision of the Central Committee on Some Major Issues Concerning Comprehensively Deepening Reform proposed to guarantee the usufruct of the homestead and explore the mortgage, guarantee, and transfer of property rights of agricultural houses. In 2014, the Central Government issued opinions on Rural Land Expropriation, Marketization of Collective Commercial Construction Land, and Pilot Reform of the Homestead System, proposing to explore the mechanism of compensated use of homestead and voluntary compensated withdrawal of homestead [9].

#### **1.3.2 Exploration stage of the "three rights separation" system of homestead (2015 to present)**

Agricultural modernization should be accelerated, according to the 2015 government work report, referring to "coordinated efforts to promote stable economic growth and structural optimization." It mentioned prudently carrying out pilot reforms to expropriate rural land, put collective commercial construction land on the market, and implement the homestead system. Some local governments began to revitalize homestead and homestead circulation in various forms. In 2016, the Zhejiang government's compulsory reform pilot put forward the farmer's "qualification right" of the homestead for the first time, which laid a certain foundation for the "separation of the three rights" of rural homestead in China. Then in 2018, the CPC Central Committee and the State Council issued

the no. 1 document, which for the first time, put forward the expression of the farmer's qualification right of the homestead, which also marked the formal beginning of the exploration of the separation of the three rights of the rural homestead. In 2020, China began to deploy a new round of homestead reform pilots to further explore the reform of the separation of the three rights of the rural homestead. Up to now, China is still exploring the "three rights separation" system of homestead ownership, qualification right and use right according to the dual structure of urban and rural areas and the national conditions of urban and rural household registration systems with Chinese characteristics.

## **2. Material and Method**

The present study is a descriptive-analytical approach to solving the acquisition, circulation and withdrawal of the rural homestead system in China. The study reviewed different laws and regulations related to housing and rural land management, including Land Reform Law 1950, Property Law 2007, Administration of Rural Housing Land 1982, Resolution on Mutual Aid and Cooperation in Agricultural Production, Resolution on Rural Cooperation, Notice on Preventing Rural Housing from Seizing Cultivated Land, Notice on Preventing the Encroachment of Farmland by Rural Housing Construction, Regulations on the Management of Land, and constitution of the people's republic of China. The Reform Law was considered a bold step of the government to protect the rights of the rural people by abolishing feudal land ownership. The property Law bestows homestead users to build houses and do other things on the land by conferring the law. The current study also consulted existing literature in support of this paper.

## **3. The Acquisition, Circulation and Withdrawal of the Right to Use Rural Homestead**

### **3.1 Acquisition of the right to use rural homestead**

#### **3.1.1 The subject of obtaining the right to use rural homestead**

Members of rural collective economic organizations who meet the requirements for building houses and applying for homestead shall enjoy the right to use homestead according to law (Table 2). Non-members of rural collective economic organizations shall not apply for the right to use residential land. But, meeting the following conditions can also become the subject of obtaining the right to the use of homestead: those who really need household division due to their children and other reasons and lack homestead; those who settle down and become members of their own collective economic organizations without homestead; relocation is necessary for the occurrence or prevention of natural disasters, the implementation of village and market town planning, and the construction of public facilities and public welfare undertakings of townships (towns). In addition, rural villagers shall not be approved to use house sites under any of the following circumstances: under 18 years of age; the area of the original homestead has reached the prescribed standards or can meet the needs of household division; selling or leasing houses in a village. Due to the different conditions of each province, the specific requirements of the subject of obtaining the right to use rural homestead are also different.

#### **3.1.2 General procedures for obtaining the right to use rural homestead**

The use right of the homestead has certain welfare nature. The main way for rural residents to obtain the use right of the homestead is to apply for it. Those who do not have a homestead, or do not need homestead for household separation due to the marriage of their children, or do not have homestead due to the need to build houses or due to the settlement of migrant population in the village, as well as those who need to be relocated due to natural disasters or the implementation of village and market town planning, can apply for homestead. Rural residents generally have to undergo application, examination, approval, and registration procedures to obtain homestead.

Application is the main procedure for obtaining the right to use a homestead. Only a villager may submit an application to the villagers' committee, which shall discuss it and report it to the township (town) people's government for examination and approval. According to the law, rural villagers applying for a homestead must meet strict conditions: first, they must be rural villagers; second, they must apply in the name of a household, and a household can only apply for a homestead; third, the area of the application shall not exceed the standards set by the municipal governments of provinces, autonomous regions and municipalities directly under the Central Government; fourthly, farmers shall not apply for homestead after selling or renting housing; fifth, the original homestead and the vacant land in the village should be used as far as possible.

Examination and approval of homestead should also go through certain procedures. Users shall, according to the prescribed land use standards, put forward their plans for building houses and submit their land use applications to the villagers' committees where they are located. The villagers' committees shall, according to the



village and town planning, conduct a comprehensive examination of their land use applications and, if necessary, submit them to the villagers' assembly for discussion and approval. A village committee shall, within the limits of its authority, report to the people's government of the township (town) for examination and approval by the people's government at the county level. No one may illegally occupy land to build houses without obtaining approval or by fraudulent means. After the people's government at the county level approves the transfer of the right to the use of homestead, the applicant shall register with the land administration department at or above the county level to clarify its scope of authority and better guarantee the realization of the right to the use of homestead. When applying for registration, relevant certification materials shall be provided in accordance with the requirements of the Civil Code and specific regulations concerning registration [10].

### **3.2 Circulation of the right to use rural homestead**

#### **3.2.1 The theory of prohibiting transfer of homestead**

The theory of prohibiting the circulation of homestead is that the circulation of the right to use rural homestead should be prohibited. Because China has experienced a long agricultural society period, and the rural population proportion is very big, in the agricultural society period, the vast majority of farmers' income sources rely on land. Living, life, etc. also need to rely on the land; so, China must restrict the flow of housing land use right to a certain extent to ensure that farmers' residency and guarantee the living conditions of the farmers. At the same time, China is a largely agricultural country, and people's food is guaranteed by arable land. If there is no restriction on the transfer of the right to use homestead, a large part of arable land may be occupied and sold by illegal means to make profits, resulting in the reduction of China's arable land area and posing a threat to national food security.

#### **3.2.2 Theory of free transfer of homestead**

According to the theory of free transfer of homestead, rural residents can obtain economic benefits through leasing and selling, increase farmers' income and improve rural residents' living standards by lifting restrictions on homestead transfer. Simultaneously, urban residents can also obtain the right to use homestead through leasing and purchase, which to some extent solves the housing pressure of urban residents.

#### **3.2.3 Theory of restricted circulation of homestead**

According to the theory of the restricted circulation of the homestead, the circulation of homestead cannot be restricted blindly, and the circulation of homestead cannot be released regardless, and a compromise is needed. On the one hand, farmers' right to residence should be guaranteed; on the other hand, land should be fully utilized to avoid too much-unutilized land. According to the theory, the transfer subject of the right to use homestead can be limited to members of rural collective economic organizations in the early stage, but with the development of the economy and the change of times, the right to use homestead also needs to be opened to urban residents to some extent.

### **3.3 Withdrawal of the right to use rural homestead**

#### **3.3.1 Overview of withdrawal of rural homestead use right**

At present, there is no unified authoritative conclusion on the concept of withdrawal of homestead use right. Some scholars divide the withdrawal of rural homestead use right into voluntary withdrawal and forced withdrawal of farmers. Others divide the withdrawal of rural homestead use right into three categories: conditional farmers voluntarily withdraw from rural collective economic organizations, compulsory recovery of the illegal homestead, and homestead consolidation, reclamation and replacement promoted by the government. However, no scholars have clearly pointed out that there is no law that clearly stipulates the concept of withdrawal of homestead use right. In fact, the withdrawal of rural homestead use right is also a form of homestead use right transfer, but this form can not only change the owner of homestead use right, but also change the nature of homestead, that is, change the use of land.

#### **3.3.2 The way of withdrawal compensation for the right to use rural homestead**

The current way of withdrawing compensation for rural homestead use right mainly includes monetary compensation, material compensation, and policy compensation. Among them, monetary compensation is the main way of rural homestead withdrawal compensation. Monetary compensation shall be given to the owner of the homestead use right by estimating the value of the rural homestead according to the area of the rural homestead, local conditions, and other factors. Food compensation refers to the replacement and resettlement of

houses according to certain standards and according to the use area of the homestead and the population of the head of the household so as to protect the residents' right of residence. Policy compensation includes employment security, old-age security, medical security, etc., which aims to maintain the life of rural residents after they legally withdraw from the homestead [11].

**Table 2.** Overview of the acquisition, circulation and withdrawal of the right to use rural homestead

Acquisition conditions	<ul style="list-style-type: none"> <li>Members of rural collective economic organizations can apply for the right to use residential land</li> <li>Non-members of rural collective economic organizations are not eligible for it</li> <li>Meeting certain conditions can avail the right</li> </ul>
Acquisition procedures	<ul style="list-style-type: none"> <li>Submitting an application to the villager's committee</li> <li>Meet conditions</li> <li>Examinations and approval</li> </ul>
Circulation right	<ul style="list-style-type: none"> <li>Prohibit transferring of the homestead to save arable land from illegal occupy</li> <li>Under "free transfer of homestead" theory rural and urban residents can lease and sell the homestead for additional income</li> <li>The theory of "restricted circulation of homestead" emphasizes on mild-restriction to ensure farmer's right of residence and avoid unnecessary loss of land</li> </ul>
Withdrawal system	<ul style="list-style-type: none"> <li>Through monetary compensation</li> <li>Material compensation</li> <li>Policy compensation</li> </ul>

#### **4.The Barriers to the Use of Rural Homestead**

##### **4.1 The widespread empty rural homestead**

With the rapid development of China's economy and the continuous improvement of people's living standards, the proportion of rural population is also decreasing. Many young people will choose to work, develop and try to settle down in cities. Therefore, its rural homestead and residence will be idle for a long time. In addition, young people who settle down in cities also bring their elderly parents to the city so that they can take care of the elderly while working. In the long run, there are seen more and more empty houses in rural areas, and "zombie villages" keep emerging, which leads to the widespread problem of the empty rural homestead and a serious waste of land resources. A study of the National New-type Urbanization Plan (2014–2020) reveals that the nearly 133 million rural population has decreased from 2000 to 2011 in China, where the demand for rural residential land grew by 30.45 million mu [12]. The outflow of rural people to cities in the last 20 years has reduced the number of rural homestead but increased the homestead [13]. Additionally, the migration of rural people to cities adds 594 million cubic meters of unused housing in rural areas each year [14].

##### **4.2 The ambiguous transfer mechanism of rural homestead use right**

At the legislative level, China's laws do not have specific provisions on the transfer mechanism of the right to use rural homestead, and the Civil Code only provides some principled issues, such as the right to transfer the right to use rural homestead, and the transfer shall follow the provisions of the Land Management Law. The Land Management Law only stipulates the conditions and restrictions of the transfer of the right to use homestead, but does not mention the specific process and implementation standards of the transfer of the right to use homestead. This makes China's rural homestead use the right circulation system in an imperfect, unclear position. In practice, if rural homestead users want to transfer homestead use right, they can only refer to other similar relevant provisions. The ambiguity of the transaction mechanism makes the transaction relationship and transaction interests of both parties unable to be clearly guaranteed and restricts the circulation of the right to use rural homestead to some extent.

##### **4.3 Imperfect legislations of rural homestead use right withdrawal compensation**

Similar to the circulation system of rural homestead use right, China's laws on the withdrawal compensation mechanism of rural homestead use right only stipulate some basic guiding rules, which are often not very operable in practice, and the actual operation of different places is also different [15].

The decision on deepening reform and strict land management issued by the State Council in 2004 encouraged the consolidation of rural construction land, and the increase of urban construction land should be linked to the decrease of rural construction land. This policy has greatly promoted the development of the withdrawal mechanism of rural homestead use right. However, at the same time, due to the lack of specific and clear provisions on the details, such as how to withdraw from the right to use the homestead, whether compensation is needed after withdrawal, and the scope of compensation, coupled with the link between it and performance in some areas,

rural residents are forced to withdraw from the right to use the homestead, cannot get compensation after withdrawing from the right to use the homestead, or there are compensation disputes. Therefore, provinces and cities are also trying to make further provisions on the conditions and procedures for the withdrawal of homestead use right and the withdrawal compensation mechanism, but on the whole, they are also some principles. So, China still needs to continue to explore the compensation mechanism for the withdrawal of homestead use right, and constantly summarize and learn from past practical experience, so as to continually improve the relevant legal system of the withdrawal of homestead use right.

#### **4.4 Imperfect after-withdrawal security system**

Rural homestead is the guarantee of rural residents' right of residence, which is related to the survival of rural residents. Without rural homestead, farmers' life and survival conditions will be difficult to guarantee. Although China has constantly been improving and improving the social security system, and continuously promoting the development of the rural social security system, but compared with the urban social security system, the rural social security system is still not perfect. If rural residents choose to give up the right to use rural homesteads and choose to live in cities, they will face greater living pressure from various aspects, such as medical security, employment and education. Therefore, in order to further activate the restriction of the rural homestead, we must improve the guarantee mechanism after the withdrawal of rural homestead use right, and eliminate the worries of rural residents. Local governments should constantly improve the guarantee mechanism for the withdrawal of rural homestead use right within the scope of laws and regulations according to the actual situation of the region, such as providing preferential policies in employment and house purchase for rural residents who withdraw from the withdrawal of rural homestead use right, and allowing them to obtain the right to use rural homestead again under certain conditions.

#### **4.5 The limitation of usufruct of the rural homestead**

Rural refers to the rural residents of housing land use right of the land to possess, utilize, seek profits from and dispose of the right. However, the repealed property law and the current civil code have no clear provisions on the income function of homestead use right as usufructuary right. On the contrary, the legal provisions also limit the income function of homestead use right to a certain extent. For example, no matter within the collective economic organization or within the collective economic organization, the use right of the rural homestead is not allowed to be mortgaged. In practice, the use right of the rural homestead as collateral shall be deemed invalid. This provision greatly limits the income right of rural residents to the use right of rural homestead. In addition, with regard to the lease of the right to use the homestead, in practice, the right to use the homestead is not allowed to be leased separately, and only the owner of the right to use the homestead is allowed to lease the house. This is also a great restriction on the right to use homestead.

#### **4.6 Existing problems for obtaining and changing the right to use the rural homestead**

At present, the construction of the rural homestead use right system in China is not perfect, many regulations are not clear, and there are even legislative conflicts. First of all, the legal provisions are not clear. There are many principles and regulations regarding the acquisition and change of the right to use rural homesteads, but have few specific regulations. For example, the system of one family and one house on the rural homestead is stipulated, but there is no relevant regulation on how to deal with the situation of multiple houses in one family caused by the homestead user obtaining the right to use the homestead through inheritance. Secondly, there are contradictions between homestead law and policy, and between policy and policy. For example, the contradiction between rural homestead uses right mortgage and rural house mortgage system, the contradiction between one family and one house system, and the contradiction between one family and many houses caused by the system of homestead goes with the house. These contradictions, if not promptly resolved, will lead to the decline of the authority of the law, which is not conducive to the construction of the rule of law.

### **5. Conclusion**

The right to use homestead was given to farmers after the founding of new China. This right ensures the farmers' ownership of land and also establishes social stability. The constitution of China and other relevant laws mandate the ownership of homestead to the collective, and farmers are given right to use it. It is a matter of great regret that after many decades, the process and terms and conditions for the right to use homestead have become complicated for the farmers. Additionally, the economic migration of rural people to cities left the homestead empty and abused land. Regarding the transfer mechanism of the right to use rural homestead, neither Civil Code nor Land Management Law provides specific provisions. Even, these laws have no clear provisions about the definite process and implementation standards of the transfer of the right to use homestead. However, the



government came up with Land Administration Law 1986 to minimize the problem of unjustified occupation of cultivated land and to stop the misuse of land; and it is believed that the revised Land Administration Law 2020 will contribute to solving these problems.

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**Wang Shuwei:** Conceptualization, Writing-Original draft preparation and Editing. **Liu Huimin:** Literature search and proofreading.

### **Conflicts of interest**

The authors declare no conflicts of interest.

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