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On the Improvement Measures of the Right of Habitation to Support the House-for-Pension Schemes in China

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ABSTRACT
China is experiencing an intensifying demographic shift toward population ageing. Against this backdrop, The "house-for-pension" schemes have emerged as a vital component of the nation's multi-tiered elderly care strategy. The advancement of such schemes holds substantial significance for diversifying pension pathways, unlocking the latent value of existing housing assets, and improving the well-being of senior citizens. The newly codified right of habitation, introduced as a distinct usufructuary right under the Civil Code of the People's Republic of China, offers a promising institutional framework to address persistent challenges inherent in the house-for-pension models. This study examines the critical role played by the right of habitation in enabling and sustaining the house-for-pension mechanisms. It further identifies structural deficiencies within the current legal and policy regime and proposes a comprehensive set of reform recommendations, aiming to foster a more secure, adaptable, and inclusive the house-for-pension service ecosystem.

KEYWORDS
Right of habitation; Population ageing; House-for-pension; Value orientation

1 Introduction

As China faces the mounting pressure of population aging, addressing the reality of “property-rich but cash-poor” elderly becomes imperative. In this context, it is the responsibility of the government, society, and individuals to collaboratively build a protection system for the elderly, guided by the principle of human-centered development. Beyond the government's foundational duty to provide baseline social safeguards, individuals also bear personal accountability for their own retirement planning. This issue transcends individual family difficulties, presenting a structural challenge for society at large. One potential solution lies in leveraging the welfare, gratuitousness, and personal exclusivity characteristics of the right of habitation within the existing legal framework, which constitutes a significant innovation in self-reliant elderly care. By exploring the establishment of the right of habitation, its intrinsic connection with house-for-pension schemes, and proposing improvements, this paper aims to contribute to mitigating the aging crisis and invites scholarly discussion.

2 Establishment of the Right of Habitation and Its Intrinsic Connection with the House-for-Pension Schemes

2.1 Establishment of the Right of Habitation

The right of habitation is one type of the usufructuary rights that enables an individual—pursuant to contractual agreement or statutory provision—to possess and use residential property, along with its ancillary facilities, owned by another party. Although the institution traces its roots to Roman law, Roman jurisprudence never articulated it as an autonomous legal concept. Instead, it was subsumed under the broader category of personal servitudes, which granted individual the right to use or derive benefit from another's property for their own advantage. In Roman legal practice, the right of habitation first emerged within familial and marital contexts and was closely intertwined with inheritance rules. It functioned as a social safety mechanism, designed specifically to secure housing for individuals who lacked testamentary rights or had lost the capacity to work upon the death of the household head. This Roman legacy profoundly influenced subsequent civil law systems. Most continental jurisdictions have since codified a distinct right of habitation within their property law frameworks. Even common law countries like the United Kingdom and the United States have recognized post-divorce habitation entitlements through judicial precedent.

Since the implementation of China's housing system reform, with the rapid development of the economy and society, the living standards of the people have gradually improved, and housing conditions have also been greatly improved. However, there are still many divorced women, single elderly people, and other groups whose housing needs are difficult to solve.Against this backdrop, on January 28, 2002, the Legislative Affairs Commission of the National People's Congress, in its explanatory note accompanying the Draft Property Law of the People's Republic of China (for Public Comment), formally proposed for the first time the inclusion of a right of habitation “to effectively protect the residential rights of the elderly, women, and minors to reside in dwellings owned by others”. Articles 211 to 218 of the draft accordingly laid out a dedicated framework for this right. The Civil Code Draft of the People's Republic of China, submitted for deliberation on

December 23, 2002, retained these provisions. By October 20, 2005, the fourth revised draft of the Property Law explicitly designated the right of habitation as an independent usufructuary right, allocating an entire chapter to its regulation. Regarding such legislative move, some scholars hailed it as an innovative highlight of China's property law reform and strongly advocated for institutionalizing the right of habitation. Others, however, questioned its necessity. Due to unresolved disagreements between academia and legal practitioners, the final version of the Property Law submitted to the National People's Congress omitted the entire chapter on the right of habitation. In response, the legislative branch explained that the application scope of the right of habitation is very narrow. Issues related to the right of habitation based on family relationships are governed by provisions related to custody and support in the Marriage Law, while issues related to habitation based on rental relationships are governed by provisions in the Contract Law and other relevant laws. These situations do not fall under the provisions of the draft regarding the right of habitation. Furthermore, the right of habitation mostly occurs between relatives and friends. In the event of a dispute, it can be resolved through the relief channels provided by existing relevant laws.

The adoption of the Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Advancement of Law-Based Governance in October 2014 accelerated the codification of the Civil Code of the People's Republic of China. During the drafting of the Book on Property Rights, numerous scholars again advocated for the inclusion of a right of habitation, emphasizing its role in legally anchoring policy goals such as "housing security for all" and "adequate support for the elderly", particularly among low-income populations. Their recommendations were ultimately accepted. The Civil Code of the People's Republic of China, enacted in 2020, formally established the right of habitation as a novel type of usufructuary rights, dedicating Chapter XIV(comprising six articles) to its definition and regulation. With this codification, the right of habitation was officially institutionalized within China's civil law framework.

2.2 The Intrinsic Connection with the House-for-Pension Schemes

The house-for-pension refers to arrangements where elderly individuals utilize their own properties by means of mortgage, lease, sale, or other methods to secure a steady cash flow for their later-life expenses. Three primary models dominate current practice. The first is reverse mortgage insurance: the elderly mortgage their houses to a financial institution while retaining the right of habitation, receiving regular pension payments until their death; upon the elderly's passing, the institution liquidates the property to recover principal and interest. The second is sale-leaseback with retained occupancy: the elderly sell their home but contractually secure a lifelong right of habitation, using the proceeds from the sale to fund retirement needs. The third is rental-based pension: the elderly lease out part or all of their dwelling to supplement retirement income through rental receipts. Both the first two models rely on the right of habitation to ensure continued housing security for the elderly, highlighting the significant intrinsic connection between the right of habitation and the house-for-pension schemes, manifesting in several key dimensions:

Firstly, the right of habitation plays a pivotal role in safeguarding the fundamental entitlement of "secure housing in old age". In the house-for-pension transactions, the foremost concern for the elderly is the potential loss of their dwellings. As a usufructuary right, the right of habitation possesses characteristics of absoluteness and exclusivity. Once validly established, it acquires full proprietary force: it binds not only third parties but also the owner of the underlying property. This ensures that even after transferring ownership or establishing a mortgage, the elderly can enjoy a stable and secure living environment, alleviating their concerns about homelessness.

Secondly, the right of habitation clarifies the rights and obligations of all parties involved, thereby reducing transaction risks. According to the Civil Code of the People's Republic of China, the establishment of the right of habitation requires registration as a method of publicity. By registering, the boundaries of rights and obligations between the elderly, financial institutions, or buyers are clearly defined. Even if future changes occur in property ownership, the legitimate right of habitation of the elderly remain unaffected. This not only mitigates transaction risks but also enhances predictability and security in transactions.

Lastly, the right of habitation provides a legal foundation for expanding the range of options and transaction models available under the house-for-pension schemes. Characterized by its inherent flexibility, it allows for the free setting of rights, terms, and conditions through contractual agreements. The inclusion of the right of habitation enables composite transaction models such as "selling with retained right of habitation" or "mortgage with the right of habitation", offering a legal basis for financial institutions and elderly care providers to develop more diversified and personalized the house-for-pension products.

3 Institutional Advantages of the Right of Habitation in Advancing the House-for-Pension Schemes

According to the Civil Code of the People's Republic of China, the right of habitation is defined as a usufructuary right that entitles the holder—pursuant to contractual agreement—to possess and use another person's residential property for the purpose of meeting basic living needs. This institution offers distinct advantages in facilitating the house-for-pension arrangements, primarily in the following dimension:

Firstly, the right of habitation is welfare-oriented. The right of habitation is a usufructuary right established on top of the ownership of another's house. Unlike the right to lease a house, its legislative purpose is not to address the supply and demand issues of houses in a market environment, but to safeguard the basic residential interests of specific civil subjects, thus possessing a certain welfare attribute. Article 366 of the Civil Code of the People's Republic of China stipulates: " As agreed upon in a contract, a person having a right of habitation enjoys the usufruct to occupy and use another's housing unit so as to meet the needs of living." As a type of property right, it possesses the common characteristics of all property rights, such as universality, absoluteness, and direct dominance. It is a long-term and stable right. The holder of the right of habitation can exclusively use the house, thus endowing the right of habitation with a certain degree of welfare function of housing security, providing institutional guarantees for the housing-based pension model.

Secondly, the gratuitous character of the right. The establishment of a right of habitation is typically an act of beneficence, and the beneficiary usually acquires it without payment. Article 368 of the Civil Code states: "The right of habitation shall be created free of charge, unless it is otherwise agreed upon by the parties. If the right of habitation is created, an application for the registration of the right of habitation shall be filed with the registration authority. The right of habitation is created at the time of registration." Its purpose is strictly tied to fulfilling residential needs; consequently, its subject, object, and content are all narrowly circumscribed by this residential function. Only natural persons with genuine housing needs may serve as rights holders; the object must be a dwelling used exclusively for residential purposes; and the rights of occupation and use may not be diverted to commercial or other non-residential ends. This provision makes clear that gratuitousness is the default principle governing the creation of habitation rights. While the default rule is gratuitousness, the law preserves space for parties to agree on compensation, reflecting respect for private autonomy. This gratuitous nature of the right significantly lowers the institutional and financial barriers to implementing the house-for-pension schemes.

Thirdly, the personal and non-transferable nature of the right. A right of habitation is granted specifically for the benefit of a designated individual and cannot be enjoyed by anyone else. Its transferability is strictly constrained. As a usufructuary right created to serve the residential interests of a particular natural person, it is inherently tied to that individual's identity and life circumstances—rendering alienation both unnecessary and impractical. Moreover, such rights often arise from close personal or fiduciary relationships between the parties, further underscoring their unsuitability for circulation in the market. Article 369 of the Civil Code explicitly provides: "The right of habitation may not be transferred or inherited. A housing unit with the right of habitation created shall not be leased, unless it is otherwise agreed upon by the parties." Typically linked to the lifetime of the rights holder—often an elderly person—the right terminates upon death and cannot be passed on, aligning precisely with the protective logic of pension-oriented housing arrangements.

4 The Intrinsic Consistency Between the Right of Habitation and the Value Orientation of the House-for-Pension Schemes

The establishment of the right of habitation under the Civil Code of the People's Republic of China aims to "recognize and protect flexible arrangements for housing security, meeting the residential needs of specific populations." Whether it is "housing security" or "specific populations", both clearly point toward the value of protecting vulnerable groups. However, the civil law fundamentally upholds private autonomy, with equality and freedom at its core. Protection of the weak can only be an indirect goal and a reflective effect of this system, aligning with the general legislative function of the Civil Code. Nonetheless, the right of habitation offers a new pathway—"the establishment of the right of habitation not only enables property owners to economically exercise their ownership but also provides non-owners with a stable legal means to use others' properties." The underlying principle remains private autonomy, with equality and freedom as its core values. Values such as protection of the weak support these principles from different angles, collectively forming the diversified value foundation of the right of habitation system. However, conflicts among these values may arise in specific contexts. While adhering to private autonomy, the right of habitation system in the Civil Code also serves significant social functions, including social security, economic promotion, and ethical value stabilization, thereby demonstrating intrinsic consistency with the value orientation of the house-for-pension schemes in multiple dimensions.

Firstly, the establishment of the right of habitation helps alleviate housing needs for vulnerable groups, achieving the policy goal of "housing security for all", which is a crucial aspect of the value orientation of the house-for-pension. One of the primary functions of the right of habitation system is addressing housing issues for the elderly, divorced individuals, or surviving spouses. As China is currently in the primary stage of socialism and will remain so for a considerable period of time, the social security system is still in the process of gradual improvement. The contradiction between housing supply and demand cannot be eliminated in a short period of time. Groups such as vulnerable parties in divorce cases, single elderly people, and surviving spouses in the event of widowhood often face the dilemma of having difficulty meeting their basic housing needs. Consequently, the Opinions on Providing Judicial Services and Guarantees for Accelerating the Improvement of the Socialist Market Economy System in the New Era, issued in July 2020, emphasize accurately understanding the legislative intent and conditions for establishing the right of habitation under the Civil Code. This ensures proper adjudication of cases involving the right of habitation, fully leveraging their social security function to protect the housing rights of vulnerable groups. The right of habitation is designed for disadvantaged parties in life, embodying support, care, and concern. Even during Roman times, the right of habitation was considered a specialized right distinct from usage or usufruct rights , confirming proprietary effects over the use of dwellings—a crucial mechanism for supporting family members, particularly women, the elderly, and children. By securing access to housing for these groups, the right of habitation directly responds to intrafamilial housing needs in the Chinese context . It enables socially vulnerable individuals—including the elderly,divorced women, minors, domestic caregivers, and others without independent housing resources—to achieve the fundamental goal of "housing security for all".

Secondly, the establishment of the right of habitation reflects mutual assistance and resource sharing among citizens, promoting social morals and improving societal norms. It embodies core values such as harmony and friendliness, echoing the value of prosperity, and aligns with the value orientation of the house-for-pension schemes. The property owners can establish the right of habitation for those facing housing difficulties, granting them long-term protection against the third parties. Although China has traditional virtues of caring for the elderly and nurturing the young, modernization and market economy transitions have sometimes led to deviations, causing homelessness among the elderly and children. After the founding of the People's Republic of China, the elevated status of women laid a social foundation for the right of habitation system.

Thirdly, the establishment of the right of habitation facilitates the effective functioning of Chinese families, embodying core values like respecting elders and caring for the young, integrity, and friendliness, harmonizing with the value orientation of the house-for-pension. By providing institutional support and legal guarantees for solving housing problems for the elderly, women, and children, the Civil Code of the People's Republic of China ensures the stability and harmony of families. The right of habitation directly addresses basic living needs, reflecting survival interests. Allowing citizens to establish the right of habitation enables certain family members to enjoy housing, fulfilling corresponding social functions. Prior to the enactment of the Civil Code of the People's Republic of China, provisions in laws like "Law of the People's Republic of China on Safeguarding the Rights and Interests of Women" , "Law of the People's Republic of China on the Protection of Minors", and "Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly" vaguely addressed the housing rights of these vulnerable groups, except Article 42 of "Marriage Law of the People's Republic of China" explicitly safeguarded women's housing interests. However, these provisions were too general and lacked practical application in judicial practice. Courts creatively applied concepts like "retention right" to address housing issues for divorced women, though without solid legal foundations, leading to instability and incomplete protection. Judicial calls for a formalized right of habitation thus emerged early and persistently, driven by the need to resolve the systemic shortcomings of ad hoc remedies like the "retention right". The formal establishment of the right of habitation in the Civil Code of the People's Republic of China provides legal basis for future case adjudications, limiting judicial discretion and aiding dispute resolution.

Fourthly, the establishment of the right of habitation respects the will and interests of property owners, embodying core values such as freedom, equality, and rule of law, complementing the value orientation of the house-for-pension schemes. Property owners can establish the right of habitation through wills, bequests, or contracts, while leaving ownership to statutory heirs, ensuring comprehensive execution of their intentions. As immovable property rights, usufructuary rights should reflect the significance of dwellings within the property system, providing necessary legal mechanisms for their utilization. Issues concerning the living and housing of the elderly and post-marriage spouses cannot be resolved by past practices; they require concrete legal protections. Particularly after economic reforms, housing commodification replaced administrative allocation and nearly cost-free usage, making residential ownership one of the most significant property rights for individuals. The privatization and propertization of housing necessitate diverse methods of realizing ownership. The Civil Code of the People's Republic of China responds to this trend by introducing the right of habitation, ensuring adaptability and flexibility in property management.

5 Countermeasures and Suggestions for Improving the System of the Right of Habitation to Promote the Development of House-for-Pension

To foster the healthy development of the house-for-pension models, it is essential to systematically strengthen the right of habitation regime and its supporting institutional ecosystem:

5.1 Improving Legislation and Judicial Interpretation

The provisions on the right of habitation in the Civil Code of the People's Republic of China are relatively general, lacking specific guidance for special issues arising in the context of the house-for-pension schemes. For instance, potential conflicts between the right of habitation and mortgage rights lack clear resolution rules. When a right of habitation is established before or after a mortgage, how should the interests of the habitation holder and the mortgagee be balanced? And when a mortgage is enforced, how should a property encumbered by a right of habitation be disposed of? Further ambiguities persist regarding the obligations of the habitation holder. The Civil Code of the People's Republic of China does not clearly allocate responsibilities for reasonable use, major maintenance costs, or tax liabilities—issues that frequently trigger disputes between elderly habitation holders and property owners or mortgagees. Additionally, procedures for extinguishing and remedying the right of habitation remain underdeveloped. Upon expiration of the agreed term or the death of the rights holder, how can the right be promptly deregistered? And if the owner infringes upon the right of habitation, what efficient legal remedies are available?

To address these issues, the following measures are proposed: First, issue detailed implementing rules specifically governing the registration of the right of habitation, standardizing application requirements, review criteria, and registration procedures nationwide. Second, clarify priority rules and conflict-resolution mechanisms between the right of habitation and other real rights—particularly mortgages—in the context of the house-for-pension arrangements through judicial interpretations or guiding cases issued by the Supreme People's Court. Third, develop standardized contractual guidelines for habitation agreements, specifying parties' obligations concerning property maintenance, cost-sharing, insurance procurement, and other operational matters.

5.2 Building an Integrated Support Ecosystem

The provisions on the right of habitation in the Civil Code of the People's Republic of China are relatively concise, and the supporting registration and evaluation mechanisms are not sound. This is mainly manifested in two aspects: Firstly, the registration rules are not uniform. There are differences among real estate registration agencies across the country in terms of application materials, review standards, and contents recorded in the registration book for residential rights registration, which affect the uniform implementation of the system and the credibility of rights. Secondly, there is a lack of a value evaluation system. How to evaluate the market value and mortgage value of properties with long-term residential rights? The absence of professional and recognized evaluation methods and institutions restricts the enthusiasm of financial institutions to participate in housing-based pension businesses.

To mitigate these constraints, three complementary strategies are recommended: First, establish a specialized valuation mechanism by either cultivating or designating qualified appraisal institutions to develop robust, standardized models for valuing dwellings encumbered by the right of habitation, thereby providing authoritative benchmarks for market transactions. Second, promote diversified financial services by encouraging institutions to innovate and design pension-oriented financial products tightly integrated with the right of habitation, provided risks are prudently managed. The government could further stimulate market participation through targeted incentives, such as partial risk compensation, tax preferences, or public-private risk-sharing arrangements. Third, explore the creation of a dedicated trading platform to facilitate the transfer, securitization, or other forms of liquidity for interests tied to habitation-encumbered properties, offering financial institutions viable exit channels and enhancing risk mitigation.

5.3 Strengthening Regulation and Risk Management

Insufficient financial and market infrastructure constitutes a key barrier to unlocking the potential of the house-for-pension schemes through the refinement of the right of habitation. This constraint is evident in three key dimensions. First, financial institutions exhibit low engagement. Banks and insurers remain cautious about offering products such as reverse mortgages due to legal uncertainties, valuation difficulties, illiquidity (stemming from the difficulty of disposing of properties with the right of habitation), and longevity risk (the unpredictability of pension payout duration). Second, a functional secondary market is virtually absent. The absence of mechanisms for transferring or realizing security interests in habitation-encumbered properties severely limits institutional investors' ability to exit, amplifying risks. Third, public awareness and trust remain low. Many citizens lack understanding of both the house-for-pension models and the right of habitation. Deeply ingrained cultural preferences for intergenerational property inheritance, compounded by isolated negative media reports, further dampen demand.

In response, regulatory and societal interventions are essential. Financial regulators should implement prudent oversight of the house-for-pension financial services, establishing clear business conduct standards to safeguard elderly consumers. A mandatory contract filing and monitoring system should be introduced to prevent exploitative practices rooted in information asymmetry. Authorities must also explicitly prohibit and rigorously prosecute illegal activities—such as unlicensed fundraising or predatory lending—disguised as the house-for-pension arrangements.

Beyond regulation, broader social support is needed. Public education campaigns should be launched across multiple channels to popularize the house-for-pension concepts and disseminate knowledge of the right of habitation, thereby building social awareness and acceptance. Legal professionals, including lawyers, notaries, and mediators, should be actively engaged to provide end-to-end services such as drafting legal documents, notarizing transactions, and resolving disputes amicably. Finally, integrating formalized the house-for-pension mechanisms with community-based home care services can amplify holistic eldercare outcomes.

6 Conclusion

The habitation right system is an important legislative innovation in the Civil Code of the People's Republic of China to respond to the needs of an aging society, laying a solid foundation in property law for the standardized and safe development of the housing-for-pension model. However, to truly make habitation right the key to activating "housing pension capital", we must face the shortcomings of current legal rules, supporting mechanisms, and market environment. By taking multiple measures such as refining legal rules, improving supporting services, strengthening supervision and guidance, and popularizing social cognition, and promoting them in a coordinated manner, we can fully leverage the function of the habitation right system, build a housing-for-pension service system with clear rights and responsibilities, controllable risks, abundant supply, and freedom of choice, and effectively help achieve the social goal of "providing the elderly with a sense of security, a place to live, and a sense of peace".

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