

摘要

國人「有土斯有財」之觀念濃厚，往往除了住的需求之外，更以購買不動產做為保存財富的重要方式。然而，不動產各別差異性很大，難以建立一個公開的市場，提供一般人所需的完整資訊，因此，在資訊不流通與不透明的情況下，極易產生資訊不對稱的問題，加上專業人士之素質良莠不齊，往往利用其掌握資訊之優勢，對於交易當事人隱藏重要資訊，甚至欺罔之行為等事件發生，致不動產交易紛爭案件層出不窮。

隨著社會經濟活動的變化，對於不動產的使用形態與權利類型也日益複雜，如果探討紛爭發生的原因及其處理方式時，僅著眼於規範的抽象內容與如何適用，往往比較不能得到想要的結果，因為就紛爭當事人而言，除了對於法律規範與事實之間的認知有所不同外，更重要的是如何妥善解決問題會比如何適用法律來得重要。

我國現今法制上之不動產仲介紛爭處理機制，除了循司法上之訴訟途徑外，尚可透過不同的訴訟外紛爭處理機制以謀求解決，惟多元的訴訟外紛爭處理機制，其本身之組織架構、處理程序及形成之法律效果並不相同，民眾對於應選擇何種之機制始可達成其訴求，以及現行法律制度下所提供之處理機制是否能夠有效妥適處理此類的紛爭，並不清楚，因此，本文嚐試從法律社會學的角度觀察我國法律對於不動產交易活動所進行的管制實際社會效果如何，並透過反思法的理論所提出之當今法律進化的特徵，提出我國在處理不動產仲介紛爭的法律制度設計上一些新的思考方向。

關鍵詞：不動產紛爭、訴訟外途徑、反思法

A Study of Disposal System for the Real Estate Disputes - Centered on the Theory of Reflexive Law of Teubner

Abstract

Whereas the concept of " Possessing Property makes Wealth " is deeply in the heart of our people, in addition to the necessity for living, they buy real estates for preserving wealth as major practice. However, the conditions of real estate are varied, it is difficult to establish a public market to provide sufficient information, hence, under the situation of short of communication and transparency of data which is easy to cause information unsymmetrical. Moreover, the complicated backgrounds of Realtors who intend to hold their favorable materials to hide from the other parties and even commit fraud.....etc. So, real estate business causes conflicts frequently.

In the wake of diversity of social economics activities, the application and rights and privileges of real estate also become more intricateness. If people explore the reason of conflict and disposal process just at the point of normative abstract content and applicable, it will always be unable to gain the ideal result. As to the dispute parties concerned, beside the different interpretation of the law and the fact, how to properly solve the problem is more important than the legal action.

In our country, the present legal process for Realtor argument disposal, in addition to the judicial charges, people can seek other way to settle the dispute. Nevertheless, the multiform dispute disposal institutions which because of their corporate structures and disposal process different constitute discrepant legal result. What kind of system people should select to achieve their purpose and, whether the designated process under the present legal

rules can solve the problem properly and effectively, people unclear. Therefore, this text is trying from the point of view of legal sociology, to observe that what is the substantial social effectiveness of real estate business operation under the control of our law and, through the characteristic specified by reflexive law of current law development, to introduce a new tendency to draw legal system to settle real estate Broker argument for our country.

Keywords : Real Estate Disputes · Alternative Disputes Resolution · Reflexive Law

