

# A Study on the Conflict Between Homebuyer Priority Rights and Mortgage Rights

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**Abstract:** Under the pre-sale system of commercial housing, homebuyers usually pay the purchase price before delivery and registration, resulting in delayed registration of ownership. When developers default or suffer capital chain disruptions, the houses are prone to seizure and judicial disposal, giving rise to conflicts of priority between consumers, mortgagees, and holders of construction project price priority rights. Through a series of judicial rules, the Supreme People's Court has established preferential protection for residential homebuyers; however, this has also brought about coordination challenges between the principle of equal treatment of creditors and the publicity of real rights. This article reviews the evolution of relevant judicial rules, analyzes the boundaries and controversies concerning the effectiveness of consumers' priority rights in excluding compulsory enforcement and claiming transfer of ownership, and proposes review approaches for special circumstances such as debt settlement by housing and secondary purchasers. Furthermore, it suggests strengthening supervision over pre-sale funds, clarifying the legal status and application conditions of consumer priority rights through legislation, and improving the dynamic disposal mechanism of mortgage rights under the framework of transfer with mortgage, so as to strike a balance between basic housing security and transaction safety.

**Keywords:** Commercial housing consumers; Priority right; Mortgage right

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## 1. Introduction

In pre-sale transactions, purchasers usually pay a substantial amount of the purchase price immediately after signing the contract, while the delivery of the house and registration of ownership are often delayed. As a result, when developers become involved in litigation or are subject to property preservation measures, purchasers frequently fall into difficulties in safeguarding their rights<sup>[1]</sup>. If purchasers can only claim as ordinary creditors, their repayment priority is often inferior to that of secured creditors such as mortgagees, and in extreme cases, they may suffer the loss of both money and housing. In response to such risks, Article 29 of the Provisions on Handling Objections to Enforcement and Reconsideration, Article 126 of the Minutes of the National Civil and Commercial

Trial Conference (“Jiǔ Mǐn Ji Yào”), the Reply on the Protection of Rights of Commercial Housing Consumers (“the Reply”), and the Interpretation of the Provisions on Objections to Enforcement and Reconsideration have gradually established a preferential protection framework for residential commercial housing consumers.

Based on a review of the evolution of these rules, this article focuses on substantive disputes concerning the conflict between consumer priority rights and mortgage rights, and proposes more operable institutional improvement suggestions.

## 2. Evolution of rules on the protection of commercial housing consumers

The priority right of commercial housing consumers has undergone a process from principle-based protection to requirement-based refinement, and then to moderate expansion. As early as 2002, the Reply on Priority of Compensation clarified that consumer rights may take precedence over construction project price priority rights and mortgage rights.

The Reply of the Supreme People’s Court on Issues Concerning the Priority of Compensation for Construction Project Prices provides in Article 1 that “when trying real estate dispute cases and handling enforcement cases, the people’s courts shall, in accordance with Article 286 of the Contract Law of the People’s Republic of China, recognize that the contractor’s priority right to compensation for construction project prices shall prevail over mortgage rights and other creditor’s rights”; Article 2 further provides that “after consumers have paid all or most of the purchase price for commercial housing, the contractor’s priority right to compensation for construction project prices shall not be asserted against the purchaser.” A 2005 reply emphasized that such protection should be limited to residential purposes and should not be expansively interpreted. In 2015, Article 29 of the Provisions on Handling Objections to Enforcement and Reconsideration further clarified the review standards for excluding compulsory enforcement by specifying requirements such as the contract, purpose, and payment ratio <sup>[2]</sup>. The Minutes of the National Civil and Commercial Trial Conference in 2019 refined the interpretation of certain requirements. On April 20, 2023, the Reply once again emphasized the preferential ranking from the perspective of residential protection and adjusted the applicable conditions. Subsequently, on July 24, 2025, the Interpretation of the Provisions on Handling Objections to Enforcement and Reconsideration further clarified that improved housing should be included within the scope of protection, refined the three core requirements of “contract–payment–residential purpose”, and specified evidentiary rules and effects concerning advance notice registration and payments made through pre-sale fund supervision accounts.

Overall, the rules increasingly emphasize a combined review of “genuine residential purpose + payment capability + transaction authenticity.”

## 3. Theoretical basis of commercial housing consumers’ priority rights under current law

The priority right of commercial housing consumers carries a strong policy-oriented character, and its legitimacy mainly derives from the following aspects.

First, in terms of hierarchy of interests, housing bears the function of basic living security, and residential interests usually rank higher in value than purely property-based secured interests <sup>[3]</sup>.

Second, from the perspective of protecting weaker parties, consumers are disadvantaged compared with developers, financial institutions, and construction enterprises in terms of information acquisition, risk control,

and utilization of institutional tools (such as advance notice registration). If handled strictly under general rules, substantive fairness would be difficult to achieve <sup>[4]</sup>. Therefore, judicial practice mitigates the concentration of risks caused by structural inequality in transactions through special protection for specific groups of homebuyers.

## **4. Effectiveness of commercial housing consumers' priority rights and their conflict with mortgage rights**

The Provisions on Handling Objections to Enforcement and Reconsideration focus on formal review in enforcement procedures and do not automatically confirm substantive rights, while the Reply is oriented toward ensuring that residential purchasers ultimately obtain housing ownership <sup>[5]</sup>.

### **4.1. General situations: The dispute over whether mortgage rights may be “extinguished”**

Consumers usually file objections to enforcement to exclude enforcement or bring actions requesting transfer of ownership. The core issue lies in whether a “clean transfer” is permissible.

#### **4.1.1. Mortgage rights may not be extinguished**

This view holds that priority rights mainly constitute procedural protection against enforcement, while mortgage rights are registered real security rights and should retain their right of follow and priority of compensation. Transfer of ownership may proceed through transfer with mortgage rather than mortgage cancellation. Article 406 of the Civil Code provides a legal basis for transfer with mortgage.

#### **4.1.2. Mortgage rights may be extinguished**

The opposing view emphasizes the finality of residential protection: if enforcement is merely excluded while the purchaser remains burdened with a mortgage for an extended period, the priority right would become illusory. Under strict limitations on residential purpose and payment requirements, extinguishing the mortgage may be supported to achieve unencumbered registration.

## **4.2. Debt settlement by housing**

The key issue is whether the transferee may be recognized as a commercial housing consumer with priority over mortgage rights. Where such arrangements occur before the maturity of the underlying obligation, they are mostly of a security nature and should generally be excluded. Where they occur after maturity, the agreements are generally valid but entail risks of evasion and harm to third parties and should therefore be strictly reviewed. As a rule, priority rights do not automatically apply and may only be exceptionally granted when the residential purpose is genuine and all requirements under Article 29 of the Provisions on Handling Objections to Enforcement and Reconsideration and the Reply are strictly satisfied.

## **4.3. Secondary purchasers**

Secondary purchasers should not be denied protection merely on the basis of being “secondary creditors.” Where the acquisition occurred prior to seizure, the residential purpose is genuine, the transaction chain and payment are clear, and statutory requirements are met, their survival risks are similar to those of original purchasers and may be included within the scope of protection.

## **5. Solutions to the conflict between commercial housing consumers' priority rights and mortgage rights**

### **5.1. Improving administrative preventive measures**

One of the practical causes of frequent conflicts is insufficient supervision over pre-sale funds, leading to misappropriation. It is necessary to strengthen special accounts and usage control for pre-sale funds and to implement mechanisms whereby sales proceeds are prioritized for repayment or deposit in credit arrangements, so as to reduce direct conflicts between mortgage enforcement and consumer rights.

### **5.2. Clarifying the legal status of commercial housing consumers**

Current preferential protection mainly relies on judicial policy rules, and its application boundaries are prone to fluctuation due to differences in adjudication standards. Legislative clarification of the scope, requirements, and effectiveness boundaries of commercial housing consumers' priority rights is necessary to form a predictable balance between residential protection and mortgage financing order<sup>[6]</sup>.

### **5.3. Establishing a dynamic handling mechanism for mortgage rights under the transfer-with-mortgage model**

Under the framework of transfer with mortgage, a phased transformation of mortgage rights from "property" to "price" may be explored. For example, sales proceeds may enter a jointly supervised account and be prioritized for loan repayment; or mortgage registration may be partially released in stages during installment repayment, thereby reducing institutional friction in consumers' acquisition of full ownership. Transparent registration of mortgage status and repayment progress may further enhance transaction predictability.

### **5.4. Future evolution of commercial housing consumers' priority rights**

The priority right of commercial housing consumers is a policy-based arrangement formed under specific social conditions, and its necessity may decline as institutions improve. With enhanced supervision of pre-sale funds and further refinement of the registration system, such priority rights may gradually return to the general framework of real rights and creditor's rights.

## **6. Conclusion**

Under China's commercial housing pre-sale system, purchasers typically assume substantial payment obligations before delivery and registration of ownership, which places them in a vulnerable position once developers fall into financial distress or enforcement proceedings. The judicial rules developed by the Supreme People's Court, including Article 29 of the Provisions on Handling Objections to Enforcement and Reconsideration, the Minutes of the National Civil and Commercial Trial Conference, and the 2023 Reply, have established a preferential protection framework for residential homebuyers by requiring a comprehensive review of contractual authenticity, payment performance, and genuine residential purpose. This approach plays an important role in safeguarding basic housing needs, yet it also creates tension with the principles of publicity of real rights and equal treatment of creditors. Looking ahead, greater emphasis should be placed on strengthening supervision of pre-sale funds, clarifying through legislation the legal nature and limits of homebuyer priority rights, and improving the handling of mortgage rights within a transfer-with-mortgage mechanism, so as to achieve a more stable balance between housing security and transactional certainty.

## Disclosure statement

The author declares no conflict of interest.

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