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厦门大学

硕士学位论文

国有土地上房屋征收补偿制度研究

Research of state-owned land
on the housing levy compensation system

吴浩涛

指导教师姓名: 孙丽岩 副教授

专业名称: 法律硕士

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摘 要

2011年1月21日，在承载着普通民众、法律学者、实务部门工作人员以及众多媒体的期盼和瞩目下，国务院正式颁布施行了《国有土地上房屋征收与补偿条例》，同时废止了原《城市房屋拆迁管理条例》。新《征收条例》明确赋予被征收人的诸多权利，使其各项合法权益得到法律的承认和维护；同时，新《征收条例》也对政府相对于以往在城市房屋拆迁中的角色进行了重新安排，依法确定了其作为补偿义务主体的身份。全文通过对被征收人和政府的权利义务进行梳理，分析了我国国有土地上房屋征收与补偿制度中存在的缺陷，并提出了修改建议。全文由前言、正文、结语三部分组成，共四章：

第一章主要对国有土地上房屋征收与补偿制度进行了概述。本章明确了房屋征收与补偿的概念和特点，对房屋征收与补偿的法律属性进行了界定，深入分析了房屋征收与补偿行为的构成要件，廓清了国有土地上房屋征收与补偿制度的法律内涵。同时，对房屋征收与补偿制度的理论基础进行分析，列举了各主要有关征收与补偿制度的理论。

第二章主要对房屋征收与补偿制度进行了比较法研究。本章分别介绍了美国、法国和德国的征收补偿制度，并对各国的征收补偿制度个性和特色进行了总结，得出共性的结论：良好的征收补偿制度必定有三个因素：公共利益、正当程序和公平补偿。这为我国构建国有土地上房屋征收与补偿制度提供了启示。

第三章主要分析了当前我国国有土地上房屋征收与补偿制度的缺陷。本章分为两部分，首先指出国有土地上房屋征收与补偿制度中征收决定运行机制存在的问题，主要有公共利益界定不清晰、被征收人事前参与和事后监督机制的缺位；然后介绍了补偿机制中存在的问题，包括征收对象的缺漏、房屋所有权转移时间的错位、补偿目的的偏差以及评估机制的缺陷。

第四章主要对我国国有土地上房屋征收与补偿制度的完善提出了建议。本章从房屋征收机制中的听证程序、补偿机制、对政府国有土地上房

屋征收与补偿行为进行司法审查以及完善房屋评估机制等各方面提出了建议。

关键词：征收与补偿；征收决定；制度完善

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ABSTRACT

January 21, 2011, in carrying the general public, legal scholars, practitioners, and many of the media sector staff expectations and attention, the State Council promulgated the "state-owned land on the housing levy and Compensation Ordinance", and to revoke the original "urban Housing demolition Management Regulations." New "Collection Ordinance" clearly gives many people the right to be charged to the legal recognition of the legitimate rights and interests and maintenance; the same time, the new "Collection Ordinance" is also compared with the previous government house demolition in the city's role has been re-arrangement, as defined by law the obligation to compensate the principal's identity. Paper was collected by the government and sort out the rights and obligations, analysis of China's state-owned land on the housing levy and the compensation system defects, and proposed changes. Full text of the preface, body, conclusion of three parts, a total of four chapters:

The first chapter mainly state-owned land on the housing levy and the compensation system are outlined. This chapter defined the housing levy and the concept of compensation and characteristics of the housing levy and property compensation law has defined the in-depth analysis of the housing levy and compensation behavior of the constituent elements, spelled out the state-owned land on the housing levy and the compensation system of legal content. Meanwhile, the housing levy and compensation system to analyze the theoretical basis, citing the main charge and the compensation system for the theory.

Chapter 2 of the housing levy and compensation system for the study of comparative law. This chapter introduced the United States, France and Germany levy compensation system, compensation system and the collection of

national personality and characteristics are summarized, come to common conclusion: a good collection of compensation system must have three elements: the public interest, due process and fair compensation. This state-owned land to build on for our housing levy and compensation system provides the inspiration.

Chapter 3 analyzes the current state-owned land on the housing levy and the compensation system deficiencies. This chapter is divided into two parts, first pointed out that the state-owned land on the housing levy and collection of compensation system in the operational mechanism of decision problems, mainly in the public interest are not clearly defined, to be levied before the personnel involved and the absence of ex post monitoring mechanism; then introduced compensation system problems, including the collection of objects missing, home ownership and the transfer time of the dislocation bias compensation purposes.

Chapter 4 China's major state-owned land on the housing levy and the compensation system improvement recommendations. This chapter from the housing levy mechanism in the hearing process, compensation mechanisms and the government-owned land on the housing levy and compensation actions for judicial review of other recommendations was made.

Keywords: Decision to levy; Collection system; Improvement and compensation

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