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Yin-Yang Contracts in the Second-hand Housing Market: Problems, Causes and Governance Policies

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Abstract: Real estate is an important industry in the national economy and plays an immeasurable role in the national and social life. However, with the rapid development of the real estate industry, in the real estate trading market, the situation of Yin-Yang contracts in the sale and purchase of second-hand houses continues to appear. The reason is that the government does not supervise the sale and purchase of the second-hand house, and the buyers and sellers in the transaction to reduce tax or defraud loans and other behaviors endanger the healthy development of real estate, resulting in major losses in national tax revenue. This paper aims to discuss how to solve the problem of Yin-Yang contracts through government supervision in practice, mainly including the legal effect of Yin-Yang contracts and tax evasion in the second-hand house transaction, and finally, through the continuous improvement of the government's supervision in the second-hand housing trading market to cope with and solve the problem of Yin and Yang contracts in the second-hand Housing trading market.

Keywords: Government Regulation; Second-hand Housing Market; Yin-yang Contract; Governance Policy.

1. Introduction

The real estate industry is an important industry in the national economy and closely related to people's livelihood. With the increasing urban population and the continuous expansion of the city's size, the real estate industry has developed rapidly, not only meeting the people's growing housing needs, but also making a major contribution to driving economic growth and increasing residents' wealth.

The people's need for a better life also includes the need for good housing. This demand plays an important role in driving the development of the real estate market. Especially in the process of urbanization, second-hand housing has played an important role in meeting diverse living needs, active real estate market, and achieving the optimal allocation of resources. Therefore, second-hand transactions are becoming more and more frequent, becoming an important choice for many people to buy a home. For example, in July 2024, more than 15,500 used commercial residential units were sold in Beijing, a slight increase of 4% month-on-month and an increase of about 60% year-on-year. Shenzhen second-hand commercial housing turnover of nearly 470 O units, an increase of more than 10% month on month, an increase of more than 100%; Shanghai used commercial residential transactions reached 18,200 units, a decrease of 23.79% from the previous month and an increase of 44.7% year-on-year[1].

However, there are some problems that cannot be ignored in the prosperous second-hand housing transaction market. Among them, the phenomenon of yin and yang contracts is the most typical and attention-grabbing. Yin and yang contract behavior not only disturbs the market order, but also harms the national interests and disturbs the normal order of the second-hand housing market. It will also increase the legal risk, increase the uncertainty and risk of the transaction. Therefore, this paper will discuss its causes, harm and countermeasures, hoping to provide a useful reference for regulating the market order of second-hand housing and safeguarding the national tax interests.

2. Causes and Harm of Yin-Yang Contracts in Real Estate Transactions

(1) The formation of the development of yin and yang contracts for the sale of houses

1. Introduction to the Concept of Yin-Yang Contracts in Real Estate Transactions

The yin-yang contract, also known as the black-and-white contract, refers to the conclusion of two contracts between the parties on the same transaction, of which one is a contract concluded with a false intention, and the other is a contract hidden by a false intention[2]. The yin-yang contract first appeared in the construction industry. First, the construction market is highly competitive, and the construction party is in a dominant position. Second, the contracting party and the contracting party collude for the common interest to evade bidding and administrative supervision. Third, the contracting party raises the price in the registered contract in order to raise the sales price of commercial housing later[3].

After the Yin-Yang contract appeared in the construction industry, it has also become popular in the real estate transaction in recent years, as the number of existing housing sales has increased. In China, the housing management department has established the online contract signing procedure in the process of housing purchase and sale in order to prevent multiple sales of a house and maintain the transaction order. However, since the state tax is levied on the basis of not less than the minimum transaction price, according to the transaction price in the online contract, the parties will often deliberately reduce the price when signing the online contract, resulting in the inconsistency of the housing price in the two contracts. Therefore, the Yin-Yang contract of housing purchase and sale is formed. The so-called Yin-Yang contract of real estate purchase and sale refers to the signing of two or three different contracts at the same time in the transaction process. In the contract transaction, the Yin contract shows the true transaction price of the buyer and seller. The Yang contract is different according to market

needs. One is to apply for more loans to inflate the housing price and hand it over to the bank; the other is to reduce the tax to fill the low housing price and hand it to the real estate transaction center for transfer. The existence of Yin-Yang contract of house purchase and sale not only disturbs the housing transaction market, but also takes the means of false tax declaration to pay less tax and commit tax evasion, involving huge amounts of money and even facing criminal punishment. The prevalence of Yin-Yang contract in the process of real estate purchase and sales reflects the booming demand for housing in the market.

2. Many factors affect the inherent housing demand in the real estate market and the formation of Yin-Yang contracts for the purchase and sale of houses

There are many internal reasons for the purchase demand in the real estate market. First of all, the property management of many second-hand houses and the commercial circle will be more mature and perfect than the first-hand houses. The geographical location is good, and the waiting time for delivery is short. Buyers will give the purchase option to the second-hand houses based on realistic considerations. Especially in the first-tier cities, the purchase of new houses is lower than that of second-hand houses. For example, in the purchase of second-hand houses in Beijing, the demand for housing improvement accounts for more than 30%. Secondly, in recent years, relevant policies have been issued in various places, involving many aspects of second-hand houses, such as modifying the exemption period of value-added tax, introducing a new measure of mortgage transfer, and allowing the increase of housing units within the scope of purchase restrictions in order to meet the three-child policy. In Qingdao, xi'an and other places, the restricted time for second-hand houses has been shortened. Nanjing and Suzhou in the Yangtze River Delta region have optimized the real estate market policies, and Hangzhou has further released the market vitality. These policies and measures have greatly reduced the purchase threshold in the second-hand housing market, enhanced the liquidity of the second-hand housing markets, and released the demand for housing replacement and improvement of the rigid groups, thus promoting the enthusiasm of the market purchase demand.

Among them, the main reason for the formation of Yin-Yang contracts in real estate transactions is that both buyers and sellers are driven by economic interests. One is driven by economic interests[4]. Buyers and sellers and some intermediary departments are driven by economic interests and want to reduce expenses by signing Yin-Yang contracts or obtain more loans through false quotations. Because the tax and fees in the purchase of second-hand housing are a very large expenditure. The higher the purchase price, the greater the tax and fee expenditure. Through the signing of Yin-Yang contracts, the actual transaction price and the price reported for the record are inconsistent. For example, the actual transaction price is a contract of 1 million yuan, but the online contract price is 500,000 yuan, and the difference will be 500, 000 yuan. Therefore, the tax and fees actually paid will be reduced. Therefore, through Yin-Yang contracts, both buyers and sellers of real estate seem to achieve a win-win situation, and both parties promote the success of the transaction. The second is that the legal awareness of the parties is weak. It is the duty of every citizen to pay taxes when buying a house, but the parties want to achieve the purpose of reducing taxes and fees through Yin-Yang contracts. The degree of understanding and compliance of the parties with the law is not high. There is no correct legal concept and legal norms, so such illegal acts occur. The weak legal awareness of the parties may bring huge risks and property losses to both parties. The third is that the government supervision is not perfect. Due to the lack of government supervision, the staff of the departments failed to perform their duties correctly and did not cooperate enough. And some law enforcement personnel's quality is not enough, and they made improper judgments in the process of law enforcement, and did not investigate and deal with the problem of Yin-Yang contracts on time, and did not collect the correct tax and fees from the taxpayers, which caused huge losses to the state tax revenue.

(2) Harm caused by yin-yang contracts in real estate transactions

3. Legal and Economic Harm Caused by Yin-Yang Contracts in Real Estate Transactions to Multiple Entities

The transaction of yin and yang contracts in the sale and purchase of houses not only violates the principle of good faith, but also brings huge economic losses and legal risks to both parties to the transaction. The amount involved in the transaction of houses is huge. Saving huge taxes and fees by signing yin and yang contracts is a huge incentive for both parties to the transaction to sign yin and yang contracts. At the same time, intermediaries will even actively offer to help buyers and sellers sign yin and yang contract to enhance their competitiveness. All kinds of behaviors not only affect the sustainable development of the market, but also bring great adverse effects to the protection and realization of the rights of both parties to the transaction, and also bring great harm to the source of national tax revenue.

The buyer needs to pay a higher amount of money, and the transaction may even fail due to the inability to repay the loan. In order to obtain more loans, the buyer signs a Yin-Yang Contract with the seller, and the seller may take this opportunity to require the buyer to pay the house according to the highest price in the contract. If it cannot be fulfilled, the contract may be terminated. The buyer may be unable to repay the loan due to the high loan, and the bank and other financial institutions will not be able to recover the funds, resulting in bad debts, which will cause certain financial risks. The buyer will also find it more difficult to obtain funds from the bank, which may ultimately lead to the failure of the transaction.

The seller may face difficulties in receiving the house. The two sides reduce tax payments by signing yin and yang contracts, but the buyer may also cheat and ask the seller to transfer the house at a lower price, while returning the extra housing funds. If the two sides cannot compromise, they will have to engage in legal negotiations. The seller will have to pay the unnecessary costs of litigation and time consumption, and there is a risk of losing the case. The result will not be worth it.

Both the buyer and the seller may face legal risks. The less taxes paid by both parties will be required to be made up, and if the amount is too large, not only will they face heavy fines, but they may also be held criminally liable. In the real estate purchase and sale contract, it can also be divided into the purchase contract and the equipment purchase contract, and the tax avoidance can be carried out in this way. That is, the buyer and the seller agree on the purchase price of the house, but in fact, they sign two contracts, one is the purchase contract of the existing house, and the other is the equipment purchase contract agreed in the agreement. The emergence of these two contracts is a typical way to evade tax by using yin and yang contracts. Not only does the behavior violate the law,

but it also poses a great risk to the buyer and the seller. After signing two contracts, the content of the two contracts is not consistent with the actual situation. The purchase price of the existing house is not consistent with the real situation. It is not the true intention of both parties. The equipment purchase contract agreed in accordance with the agreement is the same. There is no real transaction price. It is only a means to cover illegal purposes with legal forms. In the "Contract Law", it is believed that the purpose of covering illegal purposes with legal forms is combined with the content of the true intention and the content that does not violate the law to assess such two contracts. It is not the expression of true intention, and the use of legal means to hide illegal purposes to harm the interests of the state. No matter how it is understood, it cannot be defined as a legal and valid contract. Therefore, both the buyer and the seller need to bear the risk of the invalid contract.

Real estate agencies face administrative penalties for helping to conclude yin-yang contracts for the sale of houses. In the course of a housing transaction, a rental agency may, in order to facilitate a sale[5], recommend to the buyer and seller two contracts with different transaction amounts, a true price contract kept privately by the parties and actually performed by them, according to which the parties pay and settle; The other is a positive contract, a fake contract sent to the relevant administrative authorities for registration or filing purposes that is much lower than the actual transaction price, and this price is used as the basis for declaring and paying taxes on the second-hand property transaction, thereby achieving the purpose of reducing taxes and fees. Positive contracts should be signed to create fake contracts, reduce the down payment pressure of buyers by making the total price of the proposed property higher, and applying for more loans from banks. Especially during periods of rapidly rising house prices, in order to enable cash-strapped buyers to successfully purchase the right house, agents have both buyers and sellers increase the price to apply for a mortgage. The shortfall in the down payment was subsequently covered by applying for more loans, allowing the buyer to successfully buy the house he liked. On the surface, the two parties achieved the completion of the housing transaction, which in turn helped the two avoid paying taxes. The estate agents collected commissions according to the total price signed by the contract, which was a win-win situation for the three parties but caused a large loss of national tax revenue. It seriously disrupts the normal trading order, undermines the fair taxation environment, harms the interests of the state, and weakens the effect of taxation on the macroeconomic regulation of the housing market. Moreover, it cannot protect the rights and interests of the parties themselves, and there is a great risk to both parties to the transaction. Housing agencies will also face administrative penalties if they are found guilty of helping buyers and sellers sign a yin-yang contract tax.

Countries may suffer huge tax losses due to the reduction of property transaction taxes. Property transaction taxes, as one of the national taxes, are an important source of national finance. If the property purchased in the property transaction is less than 90 square meters and is the first purchase, the buyer needs to pay 1% of the real estate transaction tax. If the property ownership has not been obtained for less than five years, the buyer also needs to pay 5.5% of the business tax according to the housing price. In addition, the seller also needs to bear 1% of the personal income tax and 0.05% of the stamp duty borne by the buyer and seller respectively. If the amount involved in the property transaction is huge, the registration price and the actual transaction price are huge, then the tax avoidance space is also huge. The tax avoidance behavior of both parties to the property transaction will seriously damage the national interests and increase the financial burden. It also destroys the normal trading order, disturbs the national macro-control, and causes the unfair tax burden between tax avoiders and non-tax avoiders. This behavior may be imitated by others and become a tacit rule, thus damaging people's trust and social integrity and weakening the authority of the tax law. This is the non-observance and non-respect of the law, which affects the stability and development of society.

3. Policy Supervision and Policy Research on Yin-Yang Contracts in Real Estate Transactions

(1) It is necessary to clarify the government's responsibilities in the policy supervision of the yin-yang contract of housing transactions

1. The necessity of government performance and regulatory functions

As an organ of the state executive power, the government has administrative functions. It has the responsibility and function of dealing with public affairs. The establishment of government institutions is to enable the government to fulfill its functions and provide high-quality, high-service public goods for the people. Therefore, government institutions must fulfill their government functions and achieve their administrative goals according to their own purposes. The important content of government reform is to streamline administration, delegate powers, strengthen regulation, and improve services, because streamlining administration, delegating powers, strengthening regulation, and improving services can change the concept of supervision. However, in reality, when the government faces specific situations, it cannot change because of the new situation of facing risks. This shows that there is a need to have a more detailed division of government functions, and at the same time, adjust the content of supervision, actively respond to the new situation of social development, and improve the level of supervision with the help of digital technology.

The demand policy of the process of buying and selling second-hand housing is mainly to understand the demand of the process of buying second-hand housing. First, it is necessary to establish information communication channels for both parties. Both buyers and sellers should provide relevant information. For example, the seller provides the real estate certificate, ID card or other documents. The buyer can provide information about the condition of the house. After the two sides communicate information, they will reach the same opinion on the property rights and geographical location of the transaction house, and then sign the transaction contract. From the research on the attitude of the public towards the yin-yang contract of housing transactions, we have reached a certain conclusion. For people with the demand of buying second-hand houses, how to improve their legal awareness and protect their own interests. For these potential buyers, how to better protect their own rights and interests, and publish relevant public policies, is a relatively important role of government supervision. In the relevant cases, it can also be seen that the intermediary signs the yin-yang contracts in order to improve their own interests. Therefore, it is also an

important direction for the government to supervise them. It is not only necessary to improve the legal knowledge of both parties to the transaction and real estate intermediaries, but also to use the development of information technology to better promote the healthy development of the second-hand housing market.

(2) Research on Policies in Yin-Yang Contracts for House Sales

1. Government response to the governance policy of yin-yang contracts in housing transactions

The government is the specific executor of all kinds of market entities. In the face of illegal acts in the sale and purchase of houses, it has the responsibility to crack down hard on the harm to the health of the market. The government also has administrative and legal means. It can formulate market regulations, standardize market behavior, guide and regulate economic operation, and can also adopt administrative means to organize public production and regulate economic operation through fiscal policies. The government's policy on the sale and purchase of Yin-Yang contracts should be diverse, specific and practical. The research on the supervision of Yin-Yang contracts in the sale and purchase can be seen that the buyer and seller should follow the process, the intermediary company should follow its own industry norms, and it also depends on the government to formulate norms and implement them. And through a questionnaire on the attitude of the public to Yin-Yang contracts, the problem is that the public's legal awareness is not enough, lack of legal awareness; too much attention to their own interests, when personal interests and public interests conflict, pay more attention to their own interests; pay attention to the role of government supervision, hope that the government can better play its role in supervision. Through the discussion of these problems, how to better improve the legal awareness of the public, the buyer and seller and the real estate intermediary through the supervision of the government and enhance the protection of their own interests is a relatively important content of the governance policy. The specific measures are as follows:

The government's regulation of the development of the secondary housing industry intermediary is inseparable from the soundness of the legal mechanism. The intermediary of the secondary housing market industry has been developing with the development of China's market economy system. The main role of real estate intermediary is to be able to form an information transmission hub on the relevant subjects of the market, to provide more convenient and efficient information platform, and to promote the development of the real estate market. However, because the corresponding supporting legal mechanism is not sound, and the market lacks supervision, the development of real estate intermediary market is relatively backward and chaotic. Therefore, the primary task is to improve the laws and regulations of real estate intermediary services. This is because the development of real estate intermediaries in China is backward and chaotic, and the legislation is not perfect, which is why there are all kinds of illegal and illegal behaviors. These behaviors not only hinder the development of the real-estate intermediary market, but also affect the overall image of the real estate industry. How to promote the legal norms of the intermediary industry requires legal policies to support and restrict. When there is a dispute between the buyer and seller and the real estate intermediary, how to better protect the rights and interests of consumers is a relatively prominent problem in law. How to make more explicit legal provisions, then, requires more sound legal norms. Through legal norms, we can make up for the shortcomings of the market, promote the stable development of the industry, and form a strong supervision. In the process of normalizing, the identification of the housing purchase and sale contract, the rights and charges of the terms, and the detailed provisions need to be formulated and improved through certain judicial proceedings.

In addition to improving legal formulation, we must also strengthen contract management in housing sales transactions. The government should improve the text model of contracts and promote the improvement of the online signing and filing system of housing sales contracts. The model text of the contract should clarify the content of all parties, such as the ownership of supporting facilities, the liability for breach of contract and the clear use of property rights delivery. It should also be clearly stated to the buyer before concluding the contract. No matter what circumstances, real estate agencies and brokers should be prohibited from signing yin-yang contracts, making price differences during the transaction process, and publishing false news for agency sales. At the same time, you should find a formal agency, because a formal agency will have a relatively standard fee announcement and will impose a mandatory agency fee on contracts and circumvention banks.

To promote the resolution of Yin-Yang contract issues for housing sales, the government should also raise the legal awareness of those involved in transactions. When selecting agency staff, we should pay attention to their personal conduct, and at the same time study legal knowledge to improve their legal awareness and moral hazard. Because real estate agents are a relatively important main factor in real estate agents and the housing market. If the quality and legal awareness of the industry's personnel are improved, they serve as a bridge of communication with buyers and sellers, which can lead to a healthier development of the industry. Intermediaries can use their advantages to organize information, coordinate the interest relationships between various entities, and adjust conflicts and disputes, which can enable various market entities to coordinate, support and cooperate with each other more, and gather the strength of all parties. For both buyers and sellers, we will vigorously promote the publicity of legal knowledge to make them understand the dangers and costs of violating the law, and provide relevant legal cases for understanding.

Government governance also needs to be improved through information technology[6]. Compared with the past, the government can use information technology to improve supervision and avoid the defects of traditional supervision modes, such as actual content that does not conform to supervision, guidance rather than practical operation, and the lack of effective feedback channels. Through supervision, the public's information needs for housing transactions can be met, which will help promote the construction of information platforms. The government can increase communication channels by opening interactive information portals, so that people in need can seek help, consult, and have a place to express themselves, which is conducive to ensuring the smooth implementation of policies, supervision and implementation, and effective feedback on problems. Therefore, the website feedback channels of the Real Estate Bureau, the Ministry of Housing and Urban-Rural Development, and the Taxation Department should be opened

to effectively obtain information, formulate and implement policies in line with the times in a timely manner, and ensure that the implementation can meet the needs of the public.

After improving the legal awareness of relevant personnel, the government should also establish a more severe punishment mechanism. Because the real estate industry is related to national economy and people's livelihood, it has a huge impact on the national economy. If there are a large number of violations, it will have a bad impact on consumers, real estate agencies and the entire real estate industry. Therefore, it is necessary to improve the punishment mechanism. The punishment mechanism of real estate agencies should include suspending the revocation of business licenses or imposing penalties. By clearly defining the types of agents and staff to operate in accordance with regulations, a healthy working environment can be created, and at the same time, elimination attempts can be made to urge organizational development. Buying and selling parties can establish a system of integrity lists. If there are relevant violations, they will be added to the list of untrustworthy personnel, affecting various types of housing purchases and consumption activities. If the relevant personnel are still willing to use illegal means to carry out a violation, it shows that its strength is still not enough. It should be more perfect and severe punishment mechanism to regulate the bad operation, protect the legitimate rights and interests of the main body of the transaction, and promote the orderly development of the real estate market.

4. Conclusion

With the rapid development of social economy, people also have higher demands for the demand for second-hand housing. It is hoped that the government can provide more perfect supporting services and higher supervision level. Under this premise of demand, the study of government supervision of the Yin-Yang contract of housing transactions is of great guiding significance for improving the happiness index of people's lives and building socialism with Chinese characteristics.

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