

Original Paper

Research on the Legal Issue of “Borrowing A Name to Buy A House”

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Abstract

With the development of the economy of the times, the phenomenon of buying houses in the real estate market is not uncommon, and its legal risks continue to emerge with policy regulation and debt disputes. This paper analyzes the validity of the borrowed name purchase contract, the ownership of real rights and the review standards of enforcement objections by borrowed names by combining judicial practice and academic disputes, and proposes to construct a judicial adjudication framework for borrowed house purchase disputes by improving the rules of evidence, balancing the publicity of real rights and factual real rights, and strengthening the enforcement objection review procedures, so as to safeguard the security of transactions and the legitimate rights and interests of the parties.

Keywords

Buying a house in a name, ownership of property rights, enforcement objection, protection of creditors' interests

1. Introduction

1.1 Background and Significance of the Research

With the rapid development of the real estate market, housing prices continue to rise, and the demand for housing is growing. At the same time, the government has introduced real estate regulation policies such as purchase restriction orders to curb the rapid rise in housing prices and speculative speculation. In this context, the phenomenon of “buying a house in a borrowed name” has emerged, that is, the actual investor cannot purchase a property in his own name for various reasons, but borrows the name of others to conduct real estate transactions and register the property in the name of others. However, in recent years, with the continuous adjustment of housing purchase policies, the original adjudication policy related to disputes over borrowing a house has also changed. Therefore, it is of great theoretical and practical significance to study the legal issue of “borrowing a name”.

1.2 A Review of the Current Research Status At Home and Abroad

There are relatively few foreign studies on similar borrowed names, mainly because of the differences between their real estate market regulation policies and legal systems and those of our country. Domestic scholars have conducted extensive research on the legal issues of “borrowing a name”, mainly focusing on the validity of borrowed name contracts, the ownership of property rights, and the prevention and control of legal risks. However, there are still some insufficient inadequacies in the current research, such as the analysis of the specific types and legal consequences of borrowing a house, and the research on the standards and uniformity of judgments in judicial practice need to be strengthened (Tan, Z. Q., 2025, pp. 118-121).

1.3 Research Methods and Thesis Structure Arrangements

This paper adopts a combination of literature analysis, case analysis and normative analysis. By consulting relevant laws and regulations, academic works and journal papers, the theoretical basis of the legal issue of “buying a house in a name” is sorted out. Typical cases are selected for in-depth analysis, and the judgment views and existing problems in judicial practice are summarized. Combined with relevant legal norms, the legal nature and validity of buying a house under a name are standardized.

2. The Legal Nature of the Act of “Borrowing A Name to Buy A House”

2.1 The Concept and Characteristics of “Borrowing A Name to Buy A House”

The so-called borrowing a name to buy a house refers to the act of an actual investor borrowing another person’s name to purchase a house and registering the house in the name of another person because he does not meet the conditions for buying a house or for other purposes. Its characteristics mainly include: first, there is an objective separation between the actual investor and the nominal buyer; second, there is an agreement between the borrower and the celebrity; third, the house is registered in the name of the celebrity, but the actual ownership of the right is disputed. These characteristics will make the act of buying a house under a borrowed name have huge legal risks, especially when the borrowed person is involved in a debt dispute, the property is very likely to be enforced by its creditors such as seizure, thereby bringing unpredictable losses to the borrower (Zhan, X. X., 2025, pp. 131-134).

2.2 Determination of the Legal Nature of the Act of “Buying a House in a Name”

The behavior of “buying a house in a borrowed name” is generally more common in situations such as circumventing purchase restrictions and enjoying preferential purchase prices, but the resulting legal disputes are also increasing, especially when the borrowed person is in debt, and the property may be applied for enforcement by creditors. Therefore, accurately determining the legal nature of buying a house under a borrowed name is of great significance for resolving relevant disputes and maintaining market order. There are different views on its legal nature. Some scholars believe that buying a house in a borrowed name is a mixed contract, while others believe that a borrowed name purchase contract is an anonymous contract and should be identified and dealt with in accordance with relevant regulations,

combined with the purpose, content and transaction habits of the contract. There is also a view that buying a house in a borrowed name is a special act of changing property rights, and its essence is to realize the transfer of real rights through borrowing a name. This article argues that the act of “borrowing a name to buy a house” mainly involves the relationship between the internal agreement between the borrower and the celebrity and the external housing sales contract, and its legal nature should be recognized as a creditor’s rights and debts relationship based on the agreement of both parties.

3. Analysis of the Validity of the Borrowed Name Contract

3.1 General Principles for Determining the Validity of Contracts

According to the provisions of the Civil Code, the elements for the validity of civil legal acts include: the actor has the corresponding civil capacity; the expression of intention is true; does not violate the mandatory provisions of laws and administrative regulations, and does not violate public order and good customs. When determining the validity of a borrowed name contract, the above general principles should be followed, and factors such as the content, purpose, and signing process of the contract should be comprehensively considered.

3.2 Analysis of the Effectiveness of the Borrowed Name Contract under Different Circumstances

The borrowing contract signed by the parties to circumvent the purchase restriction policy is a policy measure introduced by the government to regulate the real estate market and curb speculative speculation. There are different views in judicial practice regarding the borrowed name contract signed to circumvent the purchase restriction policy. One view is that the purchase restriction policy is a mandatory administrative provision, not an effective mandatory provision, so the borrowed name contract is not invalid because it circumvents the purchase restriction policy. Another view is that the act of circumventing the purchase restriction policy violates public order and good customs and harms the public interest, and the borrowed name contract should be deemed invalid. This paper argues that although the purchase restriction policy is not a mandatory provision of the validity of laws and administrative regulations, the circumvention of the purchase restriction policy undermines the regulatory order of the real estate market and affects the implementation effect of the policy. At the same time, if the purpose of signing a borrowed name contract is to conceal property, evade debts and other illegal purposes, then the borrowed name contract is an act of concealing illegal purposes in a legal form, and it should be deemed invalid according to the provisions of the Civil Code. Because this kind of behavior damages the legitimate rights and interests of creditors and undermines the normal economic order and social credit system (Cai, R., 2022, pp. 139-164).

When a party borrows a name to purchase policy-guaranteed housing such as affordable housing, the purchase of affordable housing and other policy-guaranteed housing is to solve the housing difficulties of low- and middle-income families, and there are strict restrictions on the purchase subject and purchase conditions. The act of borrowing a name to purchase affordable housing and other

policy-guaranteed housing not only violates relevant policies and regulations, but also harms the interests of other families who meet the purchase conditions and undermines social fairness and justice. Therefore, according to the provisions of the Civil Code, such borrowed name contracts are invalid because they violate public order and good customs (Liu, X. W., 2024, pp. 343-348).

However, for a name borrowing contract signed for legitimate purposes, such as protecting personal privacy and enjoying preferential policies for specific groups, it should be deemed valid as long as both parties to the contract have the corresponding civil capacity, the expression of intention is true, and does not violate the mandatory provisions of laws and administrative regulations and public order and good customs. In this case, the borrowed name contract is the result of the independent choice of both parties, reflecting the principle of autonomy between the parties (Wang, L. M., 2024, pp. 91-102).

4. The Ownership of Property Rights in Buying a House in a Borrowed Name

4.1 Principles and Provisions on Changes in Real Estate Rights

According to the provisions of the Civil Code, the establishment, change, transfer and extinction of real estate rights should be registered in accordance with the law, that is, the change of real estate rights in our country adopts the principle of registration effect, and the real estate register is the basis for the ownership and content of real rights. From the perspective of the publicity effect of real rights, the house registered in the name of the borrowed person should be recognized as the property of the borrowed person in accordance with the law. Based on the trust in the real estate registration, the creditor trades with the borrowed person and forms creditor's rights, and its legitimate rights and interests should be protected. In practice, the actual right holder, that is, the borrower, usually claims that he is the real owner of the property by relying on relevant evidence such as the borrowing agreement, the certificate of capital contribution to the house payment, and the actual possession of the house. In this case, the core point of the conflict between the two parties is whether the actual right holder should receive priority protection between the claim (or the right to expect real rights) enjoyed by the actual right holder based on the internal agreement or the ordinary claim owned by the creditor based on the effect of publicity (Ma, Y. D., 2014, pp. 179-180). The Supreme People's Court has clearly stated in relevant judicial rulings that the agreement on borrowed name registration only has the attributes of creditor's rights and cannot be used against bona fide applicants for enforcement, which fully demonstrates the judicial position of giving priority to the protection of transaction security.

4.2 Judicial Practice of Judicial Views and Analysis on the Ownership of Property Rights to Buy a House in a Borrowed Name

In judicial practice, courts have different views on the ownership of property rights to buy a house under a borrowed name. Some courts hold that although there is a borrowing contract between a borrower and a celebrity, the house is registered in the name of the celebrity and should be deemed to be owned by the celebrity in accordance with the principle of public trust of real rights. The borrower can only require the borrower to perform obligations such as assisting in the transfer registration

according to the borrowed name contract, but cannot directly claim the ownership of the house. In addition, some courts believe that if the borrower can provide sufficient evidence to prove that the borrowed relationship really exists, the purpose of borrowing the name is legal, and the borrower, as the actual right holder, has complete capital contribution to the house and does not circumvent the law, then the substantive rights should be respected and the house should be determined to be owned by the borrower (Huang, X., & Wu, X. X., 2023, pp. 56-57). Therefore, when dealing with the ownership of property rights to buy a house in a borrowed name, the balance between the principle of public trust and substantive justice should be adhered to. Under normal circumstances, the principle of effective registration should be followed to determine that the house is owned by a celebrity; However, if the borrower can provide sufficient evidence to prove that the borrowed relationship is true and legal, and there is no circumvention of the law, it may be considered to determine that the house is owned by the borrowed celebrity.

5. Legal Risks and Prevention of “Borrowing A Name to Buy A House”

5.1 Legal Risks and Practical Views on Borrowing Celebrities and Celebrities

Based on the framework of property legalism, a complex pattern of interests is formed between celebrities, borrowers and third parties in disputes over borrowing a house. Borrowers may face the risk of denying the borrowing relationship and refusing to assist in the transfer registration. In addition, if the borrower is in debt, the house in his name may be seized and enforced by the court, resulting in the borrower losing ownership of the house. Some celebrities may dispose of the house without authorization, causing losses to the borrower (Cao, Y. H., & Su, X. C., 2025, pp. 48-52). Celebrities may face legal liability for borrowing money to buy houses, such as assisting borrowers to circumvent policies may be found to be illegal. If the borrower fails to repay the mortgage on time, the borrower may be liable for repayment, affecting his personal credit. In addition, disputes between celebrities and borrowers can cause trouble in their lives and work.

In practice, if the borrower buys a house in a borrowed name and is enforced due to the borrower's debts, there are two diametrically opposed views on whether the borrower can exclude enforcement: one is that the enforcement can be excluded, and the publicity and credibility effect of the registration of real estate rights is only a presumptive effect, and the registration act itself does not produce real rights, and the presumption of real estate registration can be overturned when the parties have evidence to prove that they are the true right holders. Buying a house under a borrowed name is not a mandatory provision or purchase restriction policy of laws and administrative regulations, nor does it violate public order and good customs, in line with the provisions of Article 2 of the Interpretation of the Property Law (I).

The other is that enforcement cannot be ruled out, the legal relationship of buying a house in a borrowed name is an internal relationship between the parties to the legal relationship, and the creditor's right to claim the borrower is only effective between it and the borrowed person, which

neither directly leads to a change in real rights nor has a legal effect against a third party. Moreover, the borrower should also be aware of the rights risks that may arise when the nominal buyer is inconsistent with the actual buyer due to his borrowed name to buy a house, and should bear the corresponding consequences on his own (Wu, H. Y., Liu, Y. Y., & Yuan, H., 2024, pp. 71-72). In addition, the applicant for enforcement has paid time and opportunity costs for applying for the initiation of compulsory enforcement proceedings, and there is a procedural trust interest. In comparison, the trust interests of the applicant for enforcement should be protected first. Therefore, even if the facts of the house involved in the purchase case are established, compulsory enforcement cannot be ruled out based on this.

5.2 Preventive Measures against Legal Risks

When the creditor applies for enforcement of the property in the debtor's name, the court needs to review whether the property is the debtor's liability property. According to Article 2 of the Civil Enforcement Provisions, if the actual contributor can prove the actual ownership of the property, the court should exclude enforcement. However, in practice, some courts still directly enforce on the grounds of "registration and publicity", and in some cases, the court of first instance does not accept the evidence of the actual investor, while the court of second instance excludes enforcement based on sufficient evidence. This difference in judgment reflects the lack of substantive review of real rights in the enforcement procedure. If the borrowed person transfers or mortgages the property to a third party, the third party may claim bona fide acquisition in accordance with Article 311 of the Civil Code. In this case, the actual investor can only claim compensation from the borrowed person and cannot recover the property. In practice, when the borrowed person mortgages the property to the bank without authorization, if the bank meets the requirements of "good faith, payment of reasonable consideration, and completion of registration", the actual contributor will lose his real rights.

Therefore, the borrower should sign a detailed written borrowing contract with the borrower, clarifying the rights and obligations of both parties, including the agreements on the purchase, registration, use, income, and disposal of the house, as well as the way to bear the liability for breach of contract. The contract should be as specific and clear as possible to avoid ambiguity. At the same time, the borrower should keep relevant evidence such as purchase payment vouchers, house delivery vouchers, and property fee payment vouchers to prove his actual capital contribution and possession and use of the house. This evidence can be used as an important basis for proving the existence of the borrowing relationship and the actual rights of the borrower in the event of a dispute (Zhang, Z. R., & Li, J., 2025, pp. 51-55). When the transfer conditions are met, the borrower should promptly request the borrower to assist in the registration of the house transfer and register the house in his own name to avoid the risk of the house being disposed of due to the reason of the celebrity. Finally, the borrower and the borrower should abide by laws, regulations and policies, and shall not buy a house under a borrowed name in order to circumvent the policy. Only the legal borrowing of a house can be protected by law and reduce legal risks.

6. Conclusions and Prospects

6.1 Summary of Research Conclusions

Through in-depth research on the legal issues of “borrowing a name”, this paper draws the following conclusions: “Borrowing a name” to buy a house has a unique legal nature, and is clearly different from agency behavior, trust behavior, and anonymous investment behavior; The validity of a borrowed name contract should be analyzed according to different situations, and the contract should be deemed invalid for evading purchase restriction policies, borrowing a name to purchase policy-based guaranteed housing, borrowing a name for illegal purposes, etc., and a borrowed name contract based on a legitimate purpose should be deemed valid. On the issue of property ownership, the balance between the principle of public trust and substantive justice should be adhered to. There are different legal risks for all parties to buy a house under a name, and corresponding preventive measures should be taken.

At the same time, when the debt crisis of the borrowed celebrity triggers the creditor to enforce the actual borrowed real estate in its name, in practice, it cannot be ruled out that the compulsory enforcement is because the real estate rights are registered in the form of publicity. Based on the trust in the real estate registration, the applicant has reason to believe that the house registered in the name of the borrowed person is his responsible property, and then applies for compulsory enforcement. If the borrower can provide evidence to fully prove that he and the borrowed person have signed a legal and valid borrowed name purchase agreement, entrustment contract and related house ownership agreement, prove that he has paid all or part of the price as the actual payer and actually occupied, managed or controlled the house, and the borrower has no subjective fault for the transfer registration of the property, the court may stand from the perspective of substantive fairness and justice, cut off the presumption of the validity of the real estate register, support the borrower’s claim, and exclude the compulsory enforcement of the house involved in the case (Qian, C., 2024, pp. 38-45). In addition, when the borrower has special interests such as dependence on the house for survival, under some special circumstances, if the borrower has a survival dependence on the house held on behalf of the borrower, involving survival interests, etc., the court may consider the special circumstances of the borrower and support his request to exclude enforcement. For example, if the borrower only has this residential house, if it is enforced, he will face homelessness and other situations that seriously affect his basic life

6.2 Research Deficiencies and Prospects

There are certain shortcomings in this study, such as the empirical research on the behavior of “buying a house in a name” is not in-depth enough, and the research on the uniformity of adjudication standards in judicial practice needs to be strengthened. Future research can further combine actual cases to deeply analyze the specific situation of “buying a house in a borrowed name” in different regions and different policy contexts, and provide more specific suggestions for improving the relevant legal system and judicial practice. At the same time, with the development of the real estate market and the continuous improvement of the legal system, new situations and challenges will continue to emerge on the legal

issue of “buying a house in a name”, which needs to be paid attention to and studied.

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