

J. Y. Interpretation No.358 (July 15, 1994) *

ISSUE: Is the Ministry of Interior directive constitutional in disallowing the partition of a fire escape, vehicle passageway, or frontage of a building for the purpose of recordation?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條、第二十三條) ; Articles 799, the first sentence and 823, Paragraph 1, the first sentence of the Civil Code (民法第七百九十九條前段、第八百二十三條第一項前段) ; Article 72, Subparagraphs 2 and 3 of the Regulation Governing Land Registration (土地登記規則第七十二條第二款、第三款) ; Ministry of Interior directive (61) Tai-Nei-Ti-Tze No. 491660 (November 7, 1972) (內政部六十一年十一月七日(六一)台內地字第四九一六六〇號函) ; Article 7, Paragraph 1, Subparagraph 2 of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第七條第一項第二款) .

KEYWORDS:

partition of common property (分割共有物) , common area of a building under divided ownership (區分所有建築物共同使用部分) , partitioned for the purpose of recordation (分割登記) . **

* Translated by Raymond T. Chu.

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HOLDING: While each co-owner is entitled to demand at any time the partition of common property under the Civil Code, Article 823, Paragraph 1, the first sentence, the proviso thereto makes it inapplicable where partition is impossible on account of the purpose for which the property is used. The legislative purpose of the proviso is to avoid unnecessary controversies and to promote the economic efficacy of the common property. The common area of a building under divided ownership is indispensable for all divisional owners to make use of and is by nature a property that cannot be partitioned on account of the purpose for which it is used. The Ministry of Interior directive (61) Tai-Nei-Ti-Tze No. 491660 dated November 7, 1972, whereby areas such as a fire escape, vehicle passageway, and frontage are deemed to be a part of the building and may not be partitioned for the purpose of recordation, is consistent with the provision and is not in conflict with the Constitution.

REASONING: Under the Civil Code, Article 799, the first sentence,

解釋文：各共有人得隨時請求分割共有物，固為民法第八百二十三條第一項前段所規定。惟同條項但書又規定，因物之使用目的不能分割者，不在此限。其立法意旨在於增進共有物之經濟效用，並避免不必要之紛爭。區分所有建築物之共同使用部分，為各區分所有人利用該建築物所不可或缺，其性質屬於因物之使用目的不能分割者。內政部中華民國六十一年十一月七日（六一）臺內地字第四九一六六〇號函，關於太平梯、車道及亭子腳為建築物之一部分，不得分割登記之釋示，符合上開規定之意旨，與憲法尚無牴觸。

解釋理由書：數人區分一建築物而各有其一部者，該建築物及其附屬

where a building is divided up among several persons so that each of them owns a part of it, the common area of the building and its accessories are presumed to be co-owned by all owners. The Code further provides in Article 823, Paragraph 1, the first sentence, that each co-owner is entitled to demand at any time the partition of the common property; however, the proviso thereto makes it inapplicable where partition is impossible on account of the purpose for which the property is used. The legislative purpose of the proviso is to avoid unnecessary controversies and to promote the economic efficacy of the common property. The common area of a building under divided ownership is indispensable for all divisional owners to make use of and is by nature a property that cannot be partitioned on account of the purpose for which it is used. The Regulation Governing Land Registration, Article 72, Subparagraphs 2 and 3, prescribing that ownership of the common area of a building under divided ownership must be transferred to the same person to whom ownership of the building under divided ownership is transferred

物之共同部分，推定為各所有人之共有，民法第七百九十九條前段定有明文。各共有人得隨時請求分割共有物，但因物之使用目的不能分割者，不在此限，亦為同法第八百二十三條第一項所規定。該但書之立法意旨，乃在增進共有物之經濟效用，並避免不必要之紛爭。區分所有建築物之共同使用部分，為各區分所有人利用該建築物所不可或缺，其性質屬於因物之使用目的不能分割之情形。土地登記規則第七十二條第二款及第三款規定，區分所有建築物之共同使用部分之所有權，應於各相關區分所有建築物所有權移轉時，隨同移轉於同一人，不得分割，亦在揭示同一意旨。內政部中華民國六十一年十一月七日（六一）臺內地字第四九一六六〇號函，關於太平梯、車道及亭子腳為建築物之一部分，不得分割登記之釋示，符合上開意旨，與憲法第十五條及第二十三條尚無牴觸。

and shall not be partitioned, is designed for the same purpose. The Ministry of Interior directive (61) Tai-Nei-Ti-Tze No. 491660 dated November 7, 1972, whereby areas such as a fire escape, vehicle passageway, and frontage are deemed to be a part of the building and may not be partitioned for the purpose of recordation, is consistent with the above purpose and is not in conflict with Articles 15 and 23 of the Constitution.

Incidentally, the petitioner's application in this case for unified interpretation does not meet the requirements of Article 7, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act and must therefore be denied.

本件聲請人關於統一解釋部分之聲請，核與司法院大法官審理案件法第七條第一項第二款之規定不合，應不予受理，併此說明。