

J. Y. Interpretation No.107 (June 16, 1965) *

ISSUE: Is the period of prescription as stipulated in Article 125 of the Civil Code applicable to the real property duly registered with the Land Registration Office?

RELEVANT LAWS:

Articles 125, 758, 769, and 770 of the Civil Code (民法第一百二十五條、第七百五十八條、第七百六十九條及第七百七十條) ; Article 43 of the Land Act (土地法第四十三條) ; Interpretation Yuan-tzu No. 1833 (司法院院字第一八三三號解釋) .

KEYWORDS:

registered estate (已登記不動產) , unregistered estate (未登記不動產) , right to repossession (回復請求權) , adverse possession (以取得標的不動產所有權為目的之占有) .**

HOLDING: The reference to a statute of limitation stipulated in Article 125 of the Civil Code, within which an estate owner may claim the right to repossession, is inapplicable to registered estate owners.

解釋文：已登記不動產所有人之回復請求權，無民法第一百二十五條消滅時效規定之適用。

* Translated by Wei-Feng Huang.

** Contents within frame, not part of the original text, are added for reference purpose only.

REASONING: Articles 769 and 770 of the Civil Code are solely concerned with an adverse possessor's application for title to an unregistered estate and have no application to registered estates. It follows that the statute of limitation, after which an adverse possessor may claim title by possession, does not apply to registered estates. In accordance with the foregoing, there is no scope for the application of a statute of limitation in Article 125 of the Civil Code on the registered estate owner's right to repossession. Article 758 of the Civil Code prescribes: "title to real property which has been acquired, encumbered, lost, or altered through the operation of law is ineffective unless it is registered." According to Article 43 of the Land Act, "registration under this Act gives rise to a good title against the world." The allowance to the registered owner of a right of repossession would lead to termination of the right due to lapse of the statute of limitation, making the registration system redundant. It would also lead to the unfair result of the registered owner having to bear all the tax and other burdens in relation to the land,

解釋理由書：查民法第七百六十九條、第七百七十條，僅對於占有他人未登記之不動產者許其得請求登記為所有人，而關於已登記之不動產，則無相同之規定，足見已登記之不動產，不適用關於取得時效之規定，為適應此項規定，其回復請求權，應無民法第一百二十五條消滅時效之適用。復查民法第七百五十八條規定：「不動產物權，依法律行為而取得、設定、喪失、及變更者，非經登記不生效力」，土地法第四十三條規定：「依本法所為之登記，有絕對效力」。若許已登記之不動產所有人回復請求權，得罹於時效而消滅，將使登記制度，失其效用。況已登記之不動產所有權人，既列名於登記簿上，必須依法負擔稅捐，而其占有人又不能依取得時效取得所有權，倘所有權人復得因消滅時效喪失回復請求權，將仍永久負擔義務，顯失情法之平。本院院字第一八三三號解釋，係對未登記不動產所有人之回復請求權而發。至已登記不動產所有人回復請求權，無民法第一百二十五條消滅時效規定之適用，應予補充解釋。

despite losing the right to repossession due to lapse of the statute of limitation. This is because the owner, being on the land registry, must bear all the tax and other land-related burdens under the law, and the possessor cannot claim title by adverse possession upon the expiration of the statute of limitation. This Yuan's Interpretation Yuan-tze No.1833 seeks to clarify the right to repossession of unregistered estate owners. It should be added that, as to a registered estate owner's right to repossession, there is no scope for the application of the Civil Code Article 125 statute of limitation.

Justice Shang-Kuan Shih filed dissenting opinion.

Justice Lu Chu Ger filed dissenting opinion, in which Justice Ji-Jong Wang, Justice Jou-Kang Jing and Justice Ji-Dong Lin joined.

本號解釋史大法官尚寬提出不同意見書；諸葛大法官魯、王大法官之侗、景大法官佐綱與林大法官紀東共同提出不同意見書。