

J. Y. Interpretation No.164 ( July 18, 1980 ) \*

**ISSUE:** Is there any application of the provisions of the extinctive prescription on the right to claim the removal of the interference by the owner of a registered estate?

**RELEVANT LAWS:**

J. Y. Interpretation No.107 ( 司法院釋字第一〇七號解釋 ) ; Article 125 and Article 767 of the Civil Code ( 民法第一百二十五條、第七百六十七條 ) .

**KEYWORDS :**

registered estate ( 已登記不動產 ) , right to claim the removal of the interference ( 除去妨害請求權 ) , extinctive prescription ( 消滅時效 ) .\*\*

**HOLDING:.** The right to claim the removal of the interference by the owner of a registered estate is not within the scope of the Interpretation No.107 of this Yuan. However, based on the nature of this right, there will be no application of the provision of the extinctive prescription in Article 125 of the Civil Code either.

**解釋文：**已登記不動產所有人之除去妨害請求權，不在本院釋字第一〇七號解釋範圍之內，但依其性質，亦無民法第一百二十五條消滅時效規定之適用。

---

\* Translated by Jer -Shenq Shieh.

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

**REASONING:** For according to the provisions of Article 767 of the Civil Code, the rights of the owner of a thing, as to demanding its return from anyone who possesses it without authority or who seizes it, claiming the removal of the interference on those who interfere with his ownership and claiming the prevention of such interference on those who might interfere with it, are all for the purpose of preserving the complete exercise of the ownership, being the same in nature, and therefore as for whether each of them shall have the application of the provisions about the extinctive prescription, there should be no diversity among these interpretations. If there is any diversity among them, not only it will unavoidably cause a self-contradiction in theory, but also it will cause difficulty in completely exercising the power of the ownership in practice. Interpretation No. 107 by this Yuan has expounded: “The right to claim the repossession by the owner of a registered estate does not have the application of the provision of the extinctive prescription in Article 125 of the Civil Code.” If the right to claim the removal of the inter-

**解釋理由書：**按民法第七百六十七條規定，所有人對於無權占有或侵奪其所有物者之返還請求權，對於妨害其所有權者之除去請求權及對於有妨害其所有權之虞者之防止請求權，均以維護所有權之圓滿行使為目的，其性質相同，故各該請求權是否適用消滅時效之規定，彼此之間，當不容有何軒輊。如為不同之解釋，在理論上不免自相矛盾，在實際上亦難完全發揮所有權之功能。「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」，業經本院釋字第一〇七號解釋在案。已登記不動產所有人之除去妨害請求權，有如對於登記具有無效原因之登記名義人所發生之塗銷登記請求權，若適用民法消滅時效之規定，則因十五年不行使，致罹於時效而消滅，難免發生權利上名實不符之現象，真正所有人將無法確實支配其所有物，自難貫徹首開規定之意旨。故已登記不動產所有人之除去妨害請求權，雖不在上開解釋範圍之內，但依其性質，亦無民法第一百二十五條消滅時效規定之適用。

ference by the owner of a registered estate, the right to claim the cancellation of a registration implying the invalidating cause against the person whose name is registered in the register, for example, has the application of the provisions of the extinctive prescription, it will be abolished by prescription if it is not exercised within fifteen years. Then this would unavoidably cause an inconsistency between the right in name and the right in reality, and the real owner of a thing could not actually possess the thing, and the purpose of this Article could not be followed. Therefore although the right to claim the removal of the interference by the owner of a registered estate is not within the scope of the above-mentioned Interpretation, based on the nature of this right, there will be no application of the provision of the extinctive prescription in Article 125 of the Civil Code either.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Yi-Po Cheng filed dissenting opinion.

Justice Shun-Shin Hong filed dissenting opinion.

本號解釋姚大法官瑞光、鄭大法官玉波與洪大法官遜欣分別提出不同意見書。