

论预售商品房转让的法律效力

摘要

在我国“期房限转”政策下，预售商品房还能否转让，以及转让的法律效力如何，这成了近年来购房者或者投资者关注的一个焦点。作者在阅读大量裁判文书后，发现在我国司法实务界中也存在同样的疑惑。文章通过两个典型的案例引导出文章叙述的重点，在了解商品房预售的基础上，剖析了预售商品房转让的法律属性；然后分析了当下我国预售商品房转让的法理和现实基础，表明预售商品房转让是可行的，并非无源之水；接着对预售商品房转让行为进行类型化和法律适用的讨论，进一步巩固预售商品房转让的法律效力。特别地，作者还在每部分理论分析后添加对文中案件的评析，实现理论与实践的结合，让读者更加能领会文章的真意。最后，文章通过整体的分析，针对现下我国在预售商品房转让方面的政策误读、立法缺失提出几点建议，以期预售商品房转让的法律效力能得到进一步的认可。

关键词：预售商品房转让 预售商品房转让合同 期房限转 法律效力

Abstract

Under the policy of“future marketable housing transfer limit”, whether the pre-sale commercial housing can be transferred and the legal effect of the transfer has become the focus of attention of buyers or investors in recent years. After reading a large number of judicial documents, the author finds that the same doubts exist in the judicial practice circle of our country. Through two typical cases, the article leads to the focus of the article. On the basis of understanding the pre-sale of commercial housing, it analyses the legal attributes of the transfer of pre-sale commercial housing; then it analyses the legal and practical basis of the transfer of pre-sale commercial housing in China, which shows that the transfer of pre-sale commercial housing is feasible, not water without a source, and then it makes a typification of the transfer of pre-sale commercial housing. And discussions on the application of law will further consolidate the legal effect of the transfer of pre-sale commercial housing. In particular, after each part of the theoretical analysis, the author also added the case analysis to realize the combination of theory and practice, so that readers can more understand the true meaning of the article. Finally, through the overall analysis, in view of the current policy misunderstanding and legislative deficiencies in the transfer of pre-sale commercial housing in China, the article puts forward some suggestions, with a view to further recognition of the legal effectiveness of the transfer of pre-sale commercial housing.

Key Words: transfer of pre-sale commercial housing、pre-sale commercial housing transfer contract、 future marketable housing transfer limit、 legal effect.

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