

An Analysis on Rules for Protecting Entitlements of Mandatory and Prohibitory Provisions to be Included in Standard-Form Contracts for Pre-Sales Housing

Tseng, Ming-Hsun *

Lin, Huei-Ling

Abstract

Scholars have examined the propriety of rules used to protect legal entitlements, focusing on the question whether property or liability rules result in more efficient outcome. The burdens of proof allocation often will be important in determining the optimal rule. In order to seek more effective the rule for protecting legal entitlements, this paper constructs four-rule schema to discuss which rule can reduce transaction costs and thus promote optimal exchange, by taking burdens of proof allocation into the entitlement framework. Furthermore, this paper adopts an approach based on law and economics to comparative analysis the transaction costs of the 5th and the 19th items that should be printed on the standard-form contracts for pre-sales housing with the four rules. This paper shows that the property rule with allocating burdens of proof to seller will produce more efficient incentives for minimizing the transaction costs than the others rules in the 5th and the 19th items.

Keywords: Mandatory and Prohibitory Provisions to be Included in Standard-Form Contracts for Pre-Sales Housing, Property Rules, Liability Rules, Burdens of Proof, Transaction Costs, Law and Economics.

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* Tseng, Ming-Hsun, Associate Professor, Department of Real Estate and Built Environment, National Taipei University, minghsun@mail.ntpu.edu.tw ; Lin, Huei-Ling, Master, Department of Real Estate and Built Environment, National Taipei University, ellen899@msn.com.