

Judicial Differences and Countermeasures on Division of Unregistered Houses with Joint Investment by Spouse in Divorce Proceedings

-- Empirical Analysis based on 383 Judicial Cases

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Abstract

The difficulty of judicial trial is how to divide the unregistered property jointly invested by the couple when they divorce. Analysis of 383 cases of division of unregistered houses jointly funded by spouses in divorce reveals that regarding the request for the division of a house jointly invested by the couple but not registered, the court has ruled not to divide, but also has ruled division of management and use rights or division of ownership. The decision is not divided and cannot achieve the effect of judicial division and dispute resolution, and its application should be strictly restricted; The ruling on the division of rights and interests under unregistered housing related contracts lacks legal reference, and judicial interpretations should be supplemented as a formal basis; There is a reasonable application space for division of management and use rights or division of ownership, and the specific application situations should be summarized based on judicial practice to coordinate the conflict of application between the two.

Keywords

Joint Property of Couple; Unregistered Houses; Housing Division; Not to be Divided; Management and Use Rights; Ownership.

1. Introduction

The report of the 20th National Congress of the Communist Party of China pointed out that we must achieve, maintain, and develop the fundamental interests of the broadest masses of the people. However, in recent years, due to the enormous economic value contained in houses and their carrying nature of settling down, as well as the extremely lack of relevant legal rules in China, the issue of divorce segmentation of unregistered houses jointly funded by spouses has become a difficult point in judicial trials. In judicial practice, there are three types of judgments in the court regarding the division of unregistered houses jointly invested by spouses: "no division", "division of management and use rights", and "division of ownership". Moreover, there are different understandings of the rationale for each judgment situation; At the same time, there is little direct research in the academic community on the issue of divorce segmentation of unregistered houses jointly funded by spouses, and only research has three divergences: the "no segmentation theory" [1], the "management and use rights segmentation theory" [2], and the "ownership segmentation theory" [3].

Obviously, there are still many problems in the current judicial practice in China in handling division of couples jointly contribute but have not registered houses in divorce. Therefore, it is necessary to propose relatively consistent judicial rules for the divorce division of unregistered houses jointly funded by spouses in China based on the current judicial situation and academic perspectives, in order to maximize judicial unity and protect citizens' property rights.

2. Different Judicial Opinions on Division of Unregistered Houses with Joint Investment by Spouse in Divorce Proceedings

On <https://wenshu.court.gov.cn/>, From January 1, 2020 to December 31, 2022, a total of 383 judicial cases ruled by 297 courts (including 4 higher courts, 70 intermediate courts, and 223 lower courts) in 29 provinces (autonomous regions and municipalities directly under the central government) were selected. A comprehensive examination was conducted on the court's handling of division of unregistered houses jointly invested by spouses and the basis for its judgment.

2.1. Different Handling Situations of Division of Unregistered Houses with Joint Investment by Spouse in Divorce Proceedings

After organizing and analyzing 383 judicial cases, it was found that there are three different situations regarding the handling of disputes over division of unregistered houses with joint investment by spouses: "no division", "division of management and use rights", and "division of ownership".

2.1.1. Circumstances of No Division

The analysis of 159 judicial cases in which the court did not divide the divorce disputes of jointly funded but unregistered houses by spouses reveals that there are four types of non-division situations: firstly, simply because the house is not registered or has not obtained a property certificate, without further explanation of detailed reasons, the court directly ruled not to support, not to handle, or not to divide. [4] Secondly, based on the fact that the property involved in the case has not been registered or has not obtained a property ownership certificate, the ruling shall not be divided, and it shall be clarified that the parties may negotiate and handle the matter themselves or claim their rights separately after obtaining full ownership of the property or clarifying the property ownership. [5] Thirdly, on the grounds that the property involved in the case has not yet been delivered and cannot be registered for property rights, it should not be dealt with, and it should be clarified that both spouses can claim their rights after the property meets the conditions for division. [6] Fourthly, on the grounds that the mortgage loan of the house involved in the case has not been fully repaid and the parties have not obtained full ownership of the house, it shall not be divided. At the same time, it shall be explained that the plaintiff shall claim the ownership and registration transfer of the house property rights after the bank loan is fully repaid and the mortgage registration is cancelled [7].

2.1.2. Situation of Dividing Management and Use Rights

In the disputes over division of unregistered houses jointly invested by spouses, 129 judicial cases involving division of management and use rights, and it has been found that there are five situations: firstly, only one or both parties in the case are judged to belong to the husband and wife for residential use. [8] Secondly, the residential use rights of the houses involved in the case should be temporarily handled, and the court should clarify that both parties can claim their rights separately after the houses have completed legal construction procedures and property ownership certificates. The judgment on the handling of the residential use rights of the above-mentioned houses does not represent the recognition of the legality of small property rights houses, and cannot be used as a defense against administrative penalties, proof of property ownership, or basis for demolition. [9] Thirdly, the judgment division case involves the right to possess, use, and benefit from the property (including rental income). [10] Fourthly, unlike the above clear judgment on the right to residential use, it is only the division of property rights related to the property involved in the judgment case, without specifying the specific types of rights and interests. [11] Fifth, convert the rights and interests under the relevant contracts such as the housing purchase and sale contract or the demolition and resettlement contract involved in the case to be handled. [12].

2.1.3. Circumstances of Dividing of Ownership

In 114 judicial cases involving the division of ownership for unregistered houses that were jointly invested by spouses, it was found that there are mainly five types: first, only the ownership of the houses involved in the judgment case is determined, but there is a difference between "directly registering the houses involved in the case under the name of the right holder when the judgment is processed for property registration" [13] and "changing the owner of the houses involved in the judgment case to the right holder" [14]. Secondly, in addition to the ownership of the property involved in the judgment case, the party who obtained the property shall also be judged to pay the other party compensation for the discounted property; [15] Some courts have also ruled that both spouses share ownership of the property involved in the case. [16] Thirdly, the ownership of the house involved in the judgment belongs to one party of the couple, and the party who pays the compensation to the other party. The party who obtains the compensation also cooperates with the owner to handle the registration procedures for house ownership or transfer of house ownership. [17] Fourthly, according to the divorce agreement, the ownership of the unregistered property in the case belongs to one of the spouses, and the other party has the right to use the property in question and the right to income generated based on the right to use it. [18] Fifth, in disguised form, the ownership of the house is determined, that is, the court first handles the right to use the house involved in the case, and explains that the party concerned will directly register the house as the owner of the residential use right when the property can be registered. [19].

2.2. Reasons for Different Circumstances in Divorce Division of Unregistered Houses with Joint Investment by Spouse

2.2.1. Reasons for No Division

In cases where the couple jointly contributed but did not register for the divorce division of a house, there are many reasons for the court's decision not to divide the house, mainly divided into the following eight types: firstly, although the house was jointly constructed or purchased by the couple, the court ruled not to divide the house on the grounds that the property rights registration or property ownership certificate was not obtained, and there is insufficient evidence to determine that the house in question is the joint property of the couple; [20] Alternatively, based on the fact that the property rights of the property involved have not been registered or the property certificate has not been obtained, the ownership of the property rights is unclear, and there is a dispute over the property involved or the rights and interests of outsiders, it shall not be divided.[21] Secondly, the property involved in the case has not yet been registered and has not been actually delivered, and there is uncertainty in the interests of the property and there are no practical conditions for division; [22] Or if the property involved in the case has not been registered for ownership, the ownership is unclear, and the specific value of the property cannot be determined, and the conditions for processing are not yet met, it will not be divided. [23] Thirdly, the property rights of the house in question have not yet been registered, and the couple's negotiation on the disposal of the house cannot be reached. Therefore, the house in question does not meet the conditions for division and will not be divided. [24] Fourthly, it is uncertain whether the property involved in the case is legally constructed and whether it can be registered as a real estate. It is also uncertain whether it is protected by law, and the conditions required by the parties for division have not yet been met, so it will not be divided. [25] Fifth, the property involved in the case has not been registered for property rights, but has only signed a property rights transfer contract, which only has contractual effect. The disputed property has not yet had the effect of property rights transfer, and the property rights still belong to the demolisher, development or construction unit, etc. At present, they only enjoy creditor's rights, and it is not possible to directly determine that the property involved in the case is the joint property of the husband and wife for division; [26]

Alternatively, based on the fact that the property purchase and sale contract in question involves the rights and obligations of the other party to the contract, and the "contractual rights and obligations" are not joint property of the couple, the claim of the couple to divide the rights and obligations of the property contract in question may be rejected. [27] Sixth, the mortgage loan of the house involved in the case has not been fully paid off yet, and the house property also has the Hypothec advance notice registration of the pre purchased commercial house. The bank also has the Hypothec on the house involved in the case. The house involved in the case belongs to the house that has not obtained full ownership, and cannot be disposed without the consent of the bank, so it will not be divided. [28] Seventh, the welfare housing allocated by the school based on the status of a teacher by one of the spouses in the case is not divided as it is not obtained through market purchase, and the identity attribute of its use right is specific. [29] Eighth, if the parties' litigation requests are difficult to satisfy, the court shall state that the litigation requests can be changed without the parties changing them, and therefore shall not be divided. [30].

Except for rare cases where unregistered houses obtained by one spouse according to their special status are not divided, judicial cases determine that there are two common key points in divorce disputes where the spouse jointly contribute but the unregistered houses are not divided: firstly, it does not consider whether the husband and wife have legal rights to use or claim the property involved, Based solely on the principles of "the establishment, change, transfer, and extinction of real estate property rights, if registered in accordance with the law, shall become effective; if not registered, shall not become effective", and "the real estate ownership certificate is a proof that the right holder enjoys the real estate property rights", it is stated that the evidence provided by the parties is insufficient to prove that both parties have obtained the ownership of the property in question, and therefore the property in question cannot be divided as joint property of the couple. The second is that the parties involved request the division of the ownership of the house involved in the case or request the assistance of the other party of the couple in handling the property registration of the house involved in the case, which is not supported on the grounds that "the house must be registered and transferred without any mortgage or other encumbrances".

2.2.2. Rationale for Dividing of Management and Use Rights

There are four main reasons for the court to divide the management and use rights: firstly, the house in question lacks the necessary procedures for building the house or has not gone through the property registration procedures, and does not yet meet the conditions for ownership division, but has value such as possession and use, which can be dealt with.[31] Secondly, although the property rights of the house in question have not been registered, the husband and wife have signed an agreement that clearly stipulates that the ownership of the house in question belongs to one party. Before the house in question is registered in the name of that party, they have the right to possess and use the house in question.[32] Thirdly, if the property involved in the case has not yet been registered or obtained a property ownership certificate, it is not appropriate to judge the ownership of the property. Instead, one party should use the property according to the actual situation and pay the other party a discount or housing subsidy. [33]In addition, if the property rights of the house in question have not yet been registered, but the couple can still use it together after divorce, there are also courts that agree that the couple can be judged to use the house in question according to their share of residence. [34]Fourthly, although the property involved in the case has not yet undergone property registration or property ownership certificate, and both spouses have not obtained the property rights of the house, the rights and interests in the relevant contracts such as the house purchase and sale contract or the demolition and resettlement contract have been clarified, and the rights in the contract have property attributes and meet the conditions for division. [35].

Judicial cases mainly determine the management and use rights of the houses involved in the division case from two aspects: firstly, although the houses involved in the case have not been registered with property rights or property ownership certificates, the ownership and use value of the houses involved in the case have been clearly defined and belong to property rights, which should be dealt with in divorce property division cases; The second is to recognize the interests under the housing purchase and sale contract or the demolition and resettlement contract as property interests, which can be divided as joint property of the couple, that is, to integrate the handling of contract performance and divorce property division disputes.

2.2.3. Reasons for Dividing Ownership

In the divorce property division dispute, there are six main reasons for the court to determine the ownership of the jointly invested but unregistered house by the couple. Firstly, the ownership of the house can be obtained based on factual behavior, that is, the house in question is a rural self-built house, and existing evidence can infer or confirm that the ownership belongs to both the couple, and it can be divided upon divorce.[36] Secondly, based on the effective legal documents and the fact that the property rights of the involved house can be registered, the ownership of the divided house is determined. [37] Thirdly, the property involved in the case has already met the conditions for property registration or certification, that is, the property rights of the property involved are clear and have met the conditions for ownership division, and both spouses have reached an agreement on the ownership of the property involved in the case; [38] There are also courts that, based on the fact that the property has already been registered or pre-registered, as well as the divorce agreement or housing disposal opinion reached by both spouses regarding the property, directly confirm the ownership of the property involved in the case that has not been registered or jointly owned by both spouses. [39] Fourthly, the property involved in the case was jointly funded by both spouses' units for construction. Due to historical issues, relevant property rights registration procedures have not been completed yet. However, the units where both spouses belong have issued a certificate confirming that the property is the housing allocated by the unit to their spouses, and the property rights actually belong to both spouses. [40] Fifth, the property involved in the case is the income obtained from the exchange of property rights or the demolition and resettlement of the original property owned by both spouses. The source of the property is legal and the ownership can be determined. [41] Sixth, in accordance with the principle of improving the reasonable utility of the house and reducing disputes during the use of the house, a comprehensive balance of the interests of all parties is allowed for division, and the ownership of the house involved in the case and the compensation method for the house discount are clearly defined. [42] Among the above reasons, the first and second belong to situations where a change in property rights can occur without legal action, while the other four belong to situations where a change in property rights can occur based on legal action.

The key point of this type of judgment is that although the property involved in the case has not undergone property registration or property ownership certificate, existing evidence can prove that the property involved in the case belongs to or is about to belong to both the husband and wife, so ownership can be divided. Among them, for houses that can only obtain ownership based on legal actions, there is no change in biological rights without registration. However, it is allowed to divide the ownership of the house here, and its legal basis is worth discussing. However, the judgment not only confirms that the couple jointly contributed but did not register the ownership of the house, but also addresses the issue of their divorce property division. Combining cases can improve the efficiency of dispute resolution, which is reasonable in this regard.

3. Insufficient Judicial Handling of Division of Unregistered Houses with Joint Investment by Spouse in Divorce Proceedings

3.1. Lack of Legitimacy and Rationality in Non-segmentation

Unregistered houses obtained through non-legal actions, even if not registered, do not affect the determination of property ownership. Therefore, unregistered houses obtained through non-legal actions cannot be mistakenly considered as unclear ownership and not divided based on their non-registration. Unregistered houses obtained based on legal actions cannot be simply ruled not to be divided in divorce property division disputes by the court for two reasons: One reason is that due to the influence of reality and regulatory policies, it may be completely unpredictable whether or when the property rights can be registered, and the court has been refusing to divide the property, which cannot solve the issue of divorce division of the property. This is not conducive to timely resolution of disputes, nor is it conducive to protecting the legitimate rights and interests of the parties involved.

The second is the property obtained based on legal actions, and failure to register can only indicate that there has been no-change in property rights, and both spouses do not have property rights over it, but it is not sufficient to prove that both spouses do not have legal creditor's rights. Even creditor's rights are legal property enjoyed by both spouses and can be divided as property by both spouses. There are different understandings in judicial practice regarding whether a divorce involving unregistered housing can divide the rights and interests under the housing related contract in cases where the husband and wife jointly contribute funds. Some courts believe that due to the fact that the property in question has not yet been registered for ownership, and there is a dispute and negotiation cannot be reached regarding the property that has not yet obtained ownership or full ownership, it is not appropriate to directly divide the ownership of the property. However, the rights and obligations in the commercial housing purchase and sale contract signed for the purchase of the property can be divided as joint property of the couple. [43] Some courts also believe that the property involved in the case has not been registered for property rights, and the provisions of the property purchase and sale contract cannot have the effect of property rights. The "contractual rights and obligations" are not joint property of the couple and cannot be divided. [44] The court also holds that if there is a dispute over the rights and interests of the unregistered housing contract involved in the case, it can be resolved separately through the dispute over the housing sales contract. [45].

It can be seen that not dividing the unregistered houses that are jointly invested by spouses not only has a negative impact on the efficiency of judicial division and dispute resolution, but also easily damages the legitimate rights and interests of the parties involved.

3.2. Lack of Legal Basis for Dividing the Rights and Interests under Unregistered Housing Related Contracts

Regarding the issue of divorce division of unregistered houses jointly invested by spouses, Article 77 of the Interpretation of the Marriage and Family Code (1) clearly stipulates: "If there is a dispute between the two parties regarding a house that has not yet obtained ownership or full ownership, and negotiations cannot be reached, the people's court should not judge the ownership of the house, but should judge the use of the house by the parties based on the actual situation." This provision only provides a basis for dividing the use rights of unregistered houses. However, there is currently no clear legal basis for the division of rights and interests under unregistered housing related contracts. As a result, there has been a problem in judicial practice where the parties request to divide the rights and interests of unregistered housing related contracts, and the court does not handle them on the grounds of lack of legal basis[46]. Article 3 of the Opinions on Several Issues of the Inheritance Law states that "other legitimate

assets that citizens can inherit include securities and creditor's rights that fulfill the subject matter of property". It can be seen that in the field of inheritance, "creditor's rights that fulfill the subject matter of property" have been inherited as citizens' legitimate property, which may be due to some practices where property rights have not been registered, However, reference is provided for the divorce division of houses with contractual rights such as housing purchase and sale contracts or housing demolition and resettlement contracts.

3.3. Conflict between Division of Management and Use Rights and Division of Ownership

As for houses jointly invested by spouses but not yet registered, there is a difference in understanding between the court's ability to only divide the management and use rights of the house and the direct judgment on the ownership of the house. If a court fails to register the property rights of the commercial housing involved in the case and only divides the right to use the property; [47] Another court believes that the property rights registration procedures for the commercial housing involved in the case have not been completed. However, considering that the property rights notice registration rights of the housing involved are both husband and wife, and no outsiders have raised objections to the property rights of the housing, the court has ruled to handle the ownership of the housing. [48] Obviously, in the previous case, the court only divided the use rights of the commercial housing on the grounds that the property rights had not been registered; In the latter case, the court directly divided the ownership of the commercial housing by stating that although the property registration has not been completed, the ownership of the housing can be clearly defined. Moreover, in the same case, there are also differences in the division of ownership and division of use rights of courts at different levels of trial. In the case of property division dispute after the divorce of Yang and Li, the first instance court held that although the property involved in the case had not been registered for property rights, it had actually taken over the property, and the failure to register property rights so far was not due to the reasons of Yang and Li. Therefore, the court ruled to handle the ownership of the property. However, the second instance court did not register the property rights of the property involved, and the parties did not obtain the ownership of the property, so they did not yet meet the conditions for dividing the ownership of the property, Revise the right to use the divided house. [49].

4. Suggestions for Improving the Division of Unregistered Houses with Joint Investment by Spouse in Divorce Proceedings

When dealing with disputes over the division of unregistered houses jointly funded by spouses, it is necessary to first distinguish whether the houses were acquired based on legal actions or not. Unregistered houses obtained through non-legal actions can also be acquired by both spouses without registration, and can be regarded as joint property with the nature of marital property rights, and divided according to the ownership. The improvement suggestions for the handling of unregistered housing divorce segmentation based on legal actions are as follows.

4.1. Strict Restrictions on the Application of Non-divisible Arbitral Awards

In practice, most courts, in order to avoid problems in cases and avoid being held accountable, often strictly interpret the rules of property rights changes, and directly decide not to divide a property that is jointly invested by the couple but not registered without examination. Such a judgment does not truly and thoroughly resolve disputes between the parties, and is prone to deepening conflicts and generating a new round of litigation, which is not conducive to the parties' trust in the court's judgment. Moreover, in practice, houses obtained based on legal actions, even if they have not been registered and have not yet obtained property rights, both spouses do not enjoy any property rights and are not absolutely indivisible. In practice, most

court rulings do not divide, clearly ignoring that rights other than property rights can be considered as joint property of the couple. Therefore, unregistered houses obtained based on legal actions, although they cannot be determined as joint property of the husband and wife in nature, can be divided into creditor's rights under contracts such as house purchase and sale contracts or house replacement contracts as joint property of the husband and wife.

Moreover, it may not be appropriate not to divide unregistered houses without legal construction procedures. Some scholars argue that unless the illegal building is deemed to be incapable of improvement measures and has been ruled illegal by administrative rulings (such as ordering to stop construction, demolish, or confiscate), its ownership is not naturally non-existent.[50] Other scholars argue that recognizing the ownership status of illegal buildings in real estate has significance in both public and private law.[51] It can be seen that the widely existing viewpoint in the practical community that "only legitimate buildings can be handled" is worth discussing. From the perspective of expanding the definition of private property of citizens and giving full play to the efficiency of housing resource utilization, unless the unregistered house has been identified as an illegal building by an administrative ruling, it should be allowed to be divided as the joint property of husband and wife. However, the conclusion that an illegal property has become legal cannot be inferred based on the court's ruling allowing for division, nor does it hinder subsequent administrative authorities from confirming that the property is illegal. From the perspective of playing the role of the court in resolving social disputes in a timely manner, and to reduce the cost of judicial litigation, strict restrictions should be placed on the application of non-divisible arbitral awards.

4.2. Judicial Interpretation on the Division of Rights and Interests under Unregistered Housing Related Contracts

Judicial power is the power to judge and adjudicate on the facts and laws of a case,[52] which means that justice is a just activity for people's courts to apply the law to determine and resolve disputes. When a court adjudicates a case, it must have corresponding legal basis and handle the case strictly in accordance with legal provisions. As previously stated, in disputes over the divorce and division of unregistered houses jointly funded by spouses, the court has ruled that there are no clear legal norms for the rights and interests under the contract related to the division of unregistered houses to be cited. However, the situation of dividing the rights and interests under unregistered housing related contracts is not only widely applicable in the court, but also widely recognized by the parties involved. It can also improve the efficiency of dispute resolution by combining the division of divorced property with contract disputes. It should be affirmed that it is necessary and reasonable to use it as a case of joint investment by husband and wife but unregistered housing divorce division. The Civil code has not come into force for a long time, and the legislature will not make changes in a short period of time. Therefore, it is realistic necessary to develop a judicial interpretation that divides the rights and interests under the contract related to unregistered housing to fill the legislative loopholes and provide criteria for judicial adjudication. [53] Moreover, judicial practice has accumulated certain experience, and has the conditions to formulate judicial interpretations. Compared with issuing trial guiding cases, The effectiveness level of judicial interpretation is significantly higher. [54] Specifically, we can refer to Article 3 of the "Opinions on Several Issues in the Inheritance Law" and add a clause in the "Judicial Interpretation 1 of Marriage and Family Code" that can handle creditor's rights related to the joint property of spouses, which includes the performance of creditor's rights related to property, etc., so that the rights and interests under unregistered housing related contracts are recognized and protected by law as joint property of spouses.

4.3. Coordinate the Division of Management and Use rights and the Division of Ownership

As previously explained, there are different understandings in judicial practice regarding whether the division of management and use rights or the division of ownership is the case in divorce disputes where the couple jointly contributes but has not registered the property. To solve this problem, it is necessary to distinguish whether unregistered houses are "houses that cannot fulfill ownership registration" or "houses that have not yet fulfilled ownership registration".

"Houses unable to perform the ownership registration" refers to the houses that the husband and wife will not be able to obtain the ownership registration no matter what conditions they meet. They may be houses that have not been registered on land, or houses that have not obtained planning permission, Construction permit or built in accordance with the planning permission according to the law, mainly including houses with small property rights, houses built in violation of regulations without planning approval, houses built to change the nature of land, etc. The ownership of such houses cannot be confirmed and disposed of through judicial judgments, and the management and use rights should be handled in accordance with the principle of maximizing the use of resources. At the same time, the court should clarify that its handling of this case cannot contradict the competent authorities' determination of the legality of the house and related handling.

Based on legal actions, "houses that have not yet fulfilled ownership registration" can be included in the scope of handling ownership, depending on the judge's understanding of whether the change in property rights in China recognizes the behavior of property rights, if there are both sales contracts or demolition and replacement contracts that prove the subject of property management and use rights, and if the registration or certification conditions are already met. Some scholars argue that, according to the proviso of Article 142 of the Property Law (now Article 209 of the Civil code), even if the house has not gone through the formalities of real estate transfer registration, the judge can draw a conclusion that the ownership has been transferred to the buyer based on the party's intention and the fact that the contract has basically been fulfilled. [55] This is actually based on the interpretation of the theory that the change of property rights in China has already recognized the act of property rights. However, some scholars argue that according to the provisions of the Civil code, the change of property rights in China does not adopt the theory of property act,[56] and this paper agrees with the latter. Based on this, it is advisable to divide the management and use rights of "houses that have not yet fulfilled ownership registration" obtained through legal actions in divorce property division disputes, rather than directly handling the ownership of the houses. To avoid the waste of judicial resources caused by litigation by the parties involved, if there is evidence to prove the clear ownership of rights, the court can clarify in the judgment that when the property meets the registration conditions, the ownership of the property will be directly registered under the name of the residential user when registering the property rights.

5. Conclusion

The issue of divorce division in cases where couples jointly contribute but do not register a house involves both conflicts between human ethics and legal rules, as well as coordination and connection between marriage law and property law. At the same time, the continuous reform of the housing system and other policy directions by the country have also led to conflicts between laws and policies, which are extremely complex. Considering that in disputes over the divorce division of unregistered houses with joint investment by spouses, the court has ruled not to divide, but also has judicial disputes over the division of ownership and the division of management and use rights, the application of "not to divide" should be strictly restricted, the

applicable space for ruling on the division of management and use rights and the division of ownership should be clarified, and the legal basis for ruling on the division of unregistered houses under relevant contracts should be supplemented, coordinate the application conflict between division of management and use rights and division of ownership, and effectively link them.

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