LINCOLN INSTITUTE
OF LAND POLICY

# Mortgage Enforcement and Public Regulatory Actions in China in Selected Chinese Cities

Working Paper WP16XS1

Xinrui Shi
Peking University-Lincoln Institute Center for
Urban Development and Land Policy

**July 2016**

The findings and conclusions of this Working Paper reflect the views of the author(s) and have not been subject to a detailed review by the staff of the Lincoln Institute of Land Policy. Contact the Lincoln Institute with questions or requests for permission to reprint this paper.
help@lincolninst.edu

© 2016 Lincoln Institute of Land Policy

**Acknowledgements**

I would like to thank Zhang Yubing at Harbin Institute of Economics, for his generous contributions to the survey and his insights throughout the study, and Professor Chengdong Yi at Central University of Economics and Finance for his suggestions and helpful comments.

I would also like to thank Professor Frank S. Alexander at Emory University School of Law for his guidance and comments throughout the design and implementation of this study. Any opinions expressed are those of the author and not those of the Lincoln Institute of Land Policy or Lincoln Institute-Peking University Center or any of the persons or organizations providing support to the author.

## Table of Contents


Introduction………………………………………………………………………………..… 1

Mortgage Enforcement in China…………………………………………………………...… 5

The Process of Mortgage Enforcement………………………………………………..... 6

The Problem of Junior Mortgages…..…………………………………………………... 7

Problems in the Current Enforcement System…………………..………………...… 9

Section Summary…...…………………………………………………………….… 14

Mortgage Enforcement and the Local Government……………………………………...… 14

Overbuilding and Vacancy in Selected Chinese Cities…………………………………..… 16

Understanding Inventory and Vacancy…………………………………………….... 17

Inventory and Vacancy in Selected Cities—A Survey…………………………….... 19

Discussion…………………………………………………………………………... 22

Land Banking as a Metropolitan Strategy in Chinese Cities……………………….………. 24

Conclusion…………………………………………………………………………………... 25

References…………………………………………………………………………….…… 27

**Mortgage Enforcement and Public Regulatory Actions in China in Selected Chinese Cities**

## Introduction

Over the past two decades, China's real estate market has witnessed tremendous growth. Real estate development has contributed to the prosperity of China's economy, improved quality of life for many Chinese people, and has also brought enormous wealth to developers, investors, and the government. On the other hand, the huge profits in real estate investment have also attracted speculators, inflated property values, and have influenced government incentives in regulations and in the making of public policies.[1] In recent years, housing prices across China remain staggeringly high; far beyond the affordability of its average citizen. For example, the cost of a mid-size apartment in Shanghai is more than 40 times that of an ordinary resident's annual income as of 2013.[2] Housing prices in average cities and their suburban vicinity also follow this trend. In second tier cities[3] such as Hangzhou and Nanjing, average property prices have exceeded 30,000 Yuan (about 4,600 U.S. dollars) per square meter.

In response to an overheated property market, the Chinese central government issued a series of measures including "property-purchase limitations" in 2010 to restrict "migrant" buyers from purchasing more than one home in major municipalities.[4] This measure has achieved only limited success in stabilizing home prices or limiting speculative activities.[5] Moreover, because the transfer of land use rights is a major source of revenue to local government, many cities have been reluctant to enforce property-purchase limitations. As of early 2014, more than forty cities have cancelled this policy.[6]

Many have agreed that the property purchase limitation policies, along with the Four Trillion-Yuan Stimulus Package, sheltered the Chinese housing market from the 2009 Great Recession. Not only did the property prices in most cities bounce back at the same level, with major cities hitting new highs in home prices before the enactment of various housing

---

[1] *See* Su, Fubing, Ran Tao, and Dali L. Yang, 2013. "Rethinking the Institutional Foundations of China's Hyper Growth: Official Incentives, Institutional Constraints, and Local Developmentalism." Draft Chapter, *The Oxford Handbook on Politics of Development*, eds. Carol Lancaster and Nicholas van de Walle. Oxford University Press.

[2] Strahl, Lesley and Gillem Tulloch. 2014. "China's Real Estate Bubble." 60 Minutes on CBS. WCBS, New York: August 3.

[3] The "tiers" of Chinese cities are generally determined by their respective GDP, population size, economic growth and political significance. Although there is no official demarcation of tiers, Beijing, Shanghai, Guangzhou and Shenzhen are wildly accepted as first-tier cities. Hangzhou, Nanjing, Dalian, Tianjin and others are categorized as second-tier cities, and the rest are third and fourth tiered cities.

[4] Municipal People's Government of Beijing. 2010. "Beijing Issued Rules for Implementing Home Purchase Limitations." Municipal People's Government of Beijing. May 2. *See also* Ban Fa, Guo. 2010. "Notice of the State Council on Resolutely Curbing Housing Prices In Some Cities." People's Republic of China. *See* Man, Joyce Yanyun. 2001. "China's Middle Class: Homeownership, Housing Consumption and Affordability." Working Paper Series No. 072. Beijing: Peking University-Lincoln Institute, Center for Urban Development and Land Policy.

[5] Hong, Shen. 2011. "China Expands Home-Purchase Limits," *The Wall Street Journal*, July 14. Available at http://online.wsj.com/articles/SB10001424052702304911104576445513471134364

[6] Yu, Pan. 2014. "More Than 60 Percent of Cities Expressly Relaxed Home Purchase Limitation Measures." *China Economy News*. July 31. Available in Chinese at http://www.ce.cn/cysc/fdc/fc/201407/31/t20140731_3265046.shtml.

policies, most cities are still expecting more growth and a continuous price increase.[7] In addition, as the Chinese economy has entered into a phase of slowdown and transition, cities and towns across the country more than ever have heavily relied on the real estate sector as its wagon of growth, undertaking another wave of progressive construction in housing and infrastructure projects.

The optimistic assumption that the real estate market will be ever growing, especially in top-tier cities—regarded as having unlimited demand—is alarming because it fails to perceive the higher risks inherent in higher returns. This is especially true considering that current home prices have already far exceeded the level of income of the average purchaser, with most properties financed predominantly by debts. Apart from residential mortgages issued by commercial banks, loans made outside the formal banking sector are prevalent; straightforward personal lending and unregulated shadow banking vehicles, for instance, are widespread, its size often unaccounted for and data unavailable to the public.[8] Moody's Investors Service estimates that China's shadow banking assets have reached 41 trillion RMB, equal to 65 percent of the nation's GDP in 2014.[9]

Loans from shadow lenders can give extra leverage to homebuyers, but at much higher interest rates and requires additional collateral, which, ultimately, fall back on mortgages.[10] When property price increases are slower than the accumulation of interest, many borrowers become financially strained and face serious risk of default in their mortgages and loans. Some will be unable to repay. For individual homebuyers, this could mean losing the entire family's savings or their only place of residence. The result could be even more devastating if the real estate developer is the one in default—leaving unfinished construction projects behind that often involve hundreds of families with no effective resort.

The question of mortgage enforcement after borrowers default has not garnered much public attention because the housing market has been strong and has experienced rapid growth in the past. Even if an individual homebuyer or developer faces default, there is still enough demand for investment and consumption in the market, and creditors generally have no difficulties making themselves whole by liquidating secured properties. Under a robust housing market, a few scattered sites of unfinished construction projects or several unoccupied apartment units will not impact the overall property value in a community. However, when the market is in decline, the demand shrinks, and the amount of debt along with the fees and costs on the property has accumulated to an extent that greatly exceeds its fair market value, creditors will not be likely to find the next buyer. These creditors will be left with no effective remedies; meanwhile delinquent properties could be sitting for years vacant and in stagnation, waiting for use or investment.

Vacant and abandoned properties have formed a special landscape in China—"ghost towns" refer to new urban areas that are largely uninhabited in some of the more vulnerable cities.

---

[7] Jim, Chare. 2014. "China's Hangzhou City Eases Home Purchase Restrictions," *Reuters*. July 29. Available at http://www.reuters.com/article/2014/07/29/us-china-property-easing-idUSKBN0FY0DC20140729.
[8] Eliot, Douglas, Arthur Kroeber, and Yu Qiao. 2015. "Shadow Banking in China: A Primer." Brookings Institute. Available at http://www.brookings.edu/research/papers/2015/04/01-shadow-banking-china-primerelliott-kroeber-yu
[9] Moody's. 2015. "Shadow banking slowdown reduces financial risks, but changing composition of credit flows poses new challenges." Moody's. April 29. https://www.moodys.com/research/Moodys-Shadowbanking-slowdown-reduces-financial-risks-butchanging-composition--PR_323993.
[10] Highest interest rate allowed by China is four times of the bank's lending interest. But many informal loans impose higher than the legally allowed interest rate through various methods of structuring the transaction.

The first and most well reported ghost town is Ordos in northern China.[11] Located in Inner Mongolia, Ordos was once among the richest cities famous for its large coal reserves. In its heyday in 2008, Ordos' coal mining capacity constituted more than 40 percent of China's entire coal production. In Kanbashi New District, the brand new suburb of Ordos, thousands of vacant new buildings and unfinished construction projects have sat idle for nearly five years, with no signs of completion or use. Developers either went bankrupt or fled from the city, and more than 75 percent of the building projects have been permanently halted. More than 80 percent of the offices or apartment units have never been occupied since the day of completion. The average property price in Ordos has dropped to as low as 3,000 Yuan—from its peak of 20,000. Most Ordos residents invested in Kanbashi have been working as full-time debt collectors ever since. This dismal picture has not changed to this today.

Ordos was first portrayed as only one extreme example by mainstream media. Nevertheless, the past few years has shown that more and more cities and towns, large and small, start exhibiting in varying degrees, signs of overbuilding and vacancy in its newly developed urban space and suburbs.[12] The signs are prevalent in both the metropolitan areas that boast strong economies and a steady inflow of population, and in the weaker regions that have suffered sluggish growth, a continuous loss in its workforce, and aging demographics. Many of these weaker cities continue to build and sell, hoping to attract people and jobs to settle in their new industrial parks and expanding city districts.

However, the "build it and they will come" strategy does not always fare well. In the old industrial provinces in Northeast China, rustbelt cities like Harbin, Shenyang, and Anshan are confronting inventories from overbuilding that are estimated to take five years or more to consume.[13] In Wenzhou, past accumulation of wealth and passionate urbanization movements invited the nouveau riche and the speculators, who came in for quick gains at the cost of the local housing market's long-term loss—ultimately leaving behind a legacy of vacant units and unfinished projects since its collapse in 2011.

Although the reasons for overbuilding and vacancy might be unique and complex in different regions, the presence of ghost towns should not only serve as important warning signs for Chinese investors, but should also call for the attention of local government. For the municipalities that have already suffered from the collapse of local housing markets, the issue is more pressing and requires immediate action. These city governments are left with a series of unprecedented challenges in the backdrop of a shattered local economy and a large number of vacant and delinquent properties. These local municipalities have very limited resources and budgets; some are also highly leveraged.[14]

---

[11] Day, Peter. 2012. "Ordos: The Biggest Ghost Town in China." BBC. March 17. Available at http://www.bbc.com/news/magazine-17390729 (Oct. 2014).

[12] The Economist. 2013. "Haunted Housing," The Economist. November 16. Available at http://www.economist.com/news/finance-and-economics/21589877-even-big-developers-and-state-owned-newspapers-are-beginning-express-fears (Oct. 2014)

[13] *See generally* Zhang, Yubin, Fengjuan Kong, and Fengtao Han. 2013. "Macro-Economic Policy of Housing Market in Harbin, Part II." A Study of Harbin's Housing Market Working Paper. Harbin Research Institute of Economics.

[14] *See generally* Man, Joyce Yanyun and Yang He. 2012. "The Debt Magnitude and Insolvency Risk of Local Financing Platforms in China." Working Paper. Cambridge, MA: Lincoln Institute of Land Policy. (quasi-public agencies incurred debt has risen to an alarming scale since 2009. State and local governments backed these agencies by securing hard assets including land, SOEs, and even receivables from taxes).

This is why the successful practice of land banks in the U.S. can become particularly relevant. Land banks are local public entities designed to address vacant, abandoned, and foreclosed properties and to transform them into productive use, thereby eliminating blights in the cities and in turn, revitalizing communities in crisis.[15] Land Banks should not be confused with the Chinese land reserves; land reserves are agencies of different levels established under the Land Consolidation and Rehabilitation Center of China's Ministry of Land and Resources.[16] Land reserves are authorized by the central government and Chinese land reserve centers are the sole transferors of granted land use rights in any given district. By controlling the ultimate supply of local land, land reserve centers can achieve policy goals of limiting overdevelopment, waste prevention, and conservation of valuable land resources, especially arable land.[17] In short, Chinese land reserves centers are focused on the early life cycle of the real estate market of rural land requisition and supplying land to the primary market from local government to real estate developers. Land reserve centers are not responsible for facilitating mortgage enforcement or managing vacant and abandoned properties. Alternatively, land banks in the U.S. deal with a later stage in the real estate market—namely, the "recycling" of delinquent properties and returning them to the market.

With forty years of experience, land banks in different states have effectively managed problem properties and have become a useful tool for transforming neighborhoods and cities. During the Great Recession in 2008, land banks and land banking were implemented for the first time into federal law and a targeted use of funding under the Neighborhood Stabilization Program, a national initiative established by the U.S. Congress in response to the foreclosure crisis. The land banks' efforts continue today and they have achieved remarkable results in such cities as Flint, Detroit, Cleveland, and Atlanta, not only effectively addressing delinquent properties and eliminating urban blight, but also providing opportunities for low-income families to acquire affordable housing and obtain ownership of property.

As Chinese cities and municipalities are facing similar issues and challenges, the successful experience of land banks in American cities may provide new approaches and inspirations to Chinese leaders. For cities that have suffered vacancy and decay, the city and provincial government require strategies and immediate action to enable the transfer and the reuse of vacant and delinquent properties and to revitalize the local economy. Reducing excessive inventory and vacancy has become a national concern, its importance has been highlighted in the agenda of the central government; now is the time to bring in transferable experience and knowledge, now is the time to act.

This paper serves as a primer to examine the issues extant in the Chinese mortgage enforcement system; to analyze overbuilding and vacancy in three Chinese cities; and to explore the possibility of land banking as a metropolitan policy in China. A careful analysis of the Chinese mortgage enforcement system reveals that current institutions are inefficient and ineffective both in terms of realizing the creditor's right of payments and in protecting the auction buyer's expectation of a fair and efficient transaction. The core problem is that the laws fail to recognize local governmental interests in the property upon which is enforced, and has failed to define the local government's roles during the mortgage enforcement process. As a result, local government does not have the necessary authority or experience to

[15] *See* Alexander, Frank S. 2011. *Land Banks and Land Banking.* Center for Community Progress.
[16] Zhao, Cheng-sheng, Xian-jin Huang, and Zhi-gang Chen. 2011. "Relevant Theoretical Research on Municipal Land Reservation Planning." *Modern Urban Research* 4-11.
[17] Huang, Ding-xi. 2012. "Land Banking Mechanism and Its Effects on City Development in China." Post-Doctorate Thesis. Pokfulam, Hong Kong: The University of Hong Kong.

participate in the legal processes to enforce these failures and resorts to detrimental and radical "self-help"—use or abuse of its administrative powers—to protect its interests. Ultimately, this lack of jurisdictional clarity hinders free transfer of ownership. When mortgage enforcement generates an abundance of vacant and abandoned properties, local government lacks the effective legal tools to take control of the vacant properties that private parties are either unwilling or unable to take ownership and responsibility for.

The three cities that will be examined in this report have all witnessed and experienced degrees of overbuilding and vacancy and share similar conditions. Wenzhou is an example of a city that has suffered housing market collapses in 2011. Harbin is an example of a Rust Belt city that is struggling with issues of overbuilding, a declining housing market, and an economy that has historically relied on heavy industries—a society in dire need of structural reforms and a systematic reinvigoration plan. Nanjing is an example of a city that has experienced years of rapid urban expansion and overbuilding while its housing prices continued to soar.

A policy suggestion of this paper is that laws should be put into effect that would allow local governments to file monetary claims against the property of violators; that is, local government should be allowed to file a lien that is attached to the property and hold an *in rem* right. The result of this mechanism would be to make the local government a secured creditor against the property and will allow local governments to enforce its rights as a lienholder, even when the property is transferred to a series of different hands. This is also the first step for the local government to obtain control of properties that have suffered from years of disrepair and disinvestment through an entity similar to a land bank. In this way, local government will have the opportunity and mechanism to reconnect problem properties to the market or reserve problem properties for future planning and local use.

The rest of this paper is organized as follows: Section II examines Chinese laws on mortgage enforcement in comparison to American foreclosure laws; Section III investigates the problem of overbuilding and vacancy citing three cities, namely Wenzhou, Harbin, and Nanjing, as examples; Section IV discusses American land banking practices and explores the possibilities of implementing land banking into Chinese local and municipal governments; and Section V concludes the analysis.

## Mortgage Enforcement in China

Under Chinese law, a real estate mortgage involves a transfer by a debtor-mortgagor to a creditor-mortgagee of a real estate interest, without taking possession of the property, to be held as security for the performance of an obligation.[18] Prior to the enactment of New Property Law (NPL) in 2007, Chinese laws on mortgages were tentative, isolated provisions existing in various parts of different statutes. Later, after the NPL came into effect, the rules on mortgages were consolidated and mostly provided for under Chapter 15 of the NPL. Meanwhile, the Guarantee Law and several Judicial Interpretations issued by the Supreme People's Court remain to be taken into effect as laws that govern mortgages and address issues not covered in the NPL.

---

[18] *See generally* Wuquan fa [Property Rights Law] (promulgated by the Standing Comm. National People's Cong., Mar. 16, 2007, effective Oct. 1, 2007), (P.R.C.)

Many lawyers and scholars generally agree that Chinese mortgage laws have, at least to some extent, followed the American and European legal traditions.[19] The methods prescribed in Chinese laws on realizing the mortgagee's rights, namely negotiated sale and judicial auction, are comparable to American mortgage foreclosure laws. If a debtor defaults on the payments of a mortgage loan, the secured creditor can enforce sale of the real estate collateral to pay the obligation.[20] The question is: "How?" The substantive laws lack details about the enforcement process. It is not clear whether the secured creditor must go to trial when the parties fail to reach agreement with the debtor on the selling of the property by negotiation. In reality, this often was the case and lenders were, and still are, almost always required to bring a lawsuit on the entire debt before they can ask the court to enforce the mortgage upon the property.

**The Process of Mortgage Enforcement**

The 2012 Amendment of the Civil Procedure Law (CPL) provides clarity that makes the enforcement process a separate, non-judicial proceeding.[21] In other words, if there is no substantive legal dispute, lenders can initiate the enforcement proceeding without litigating the entire issue. The revised CPL permits a direct auction if a secured lender's application meets the legal requirements.

The basic procedure of an enforcement action is set out as follows: First, the secured creditor must obtain valid, effective legal documents as proofs evidencing that the main obligation is due and payable and the security interest attached to the loan has been effectively created. In terms of a security interest on real estate, a mortgage must be recorded with the title registration office to become effective, and the encumbrance is reflected on the property owner's title certificate. The effective legal documents include effective judgment, an arbitration order, mediation and settlement agreements, and notarization of the loan agreement. The application will not be reviewed or approved by the court if the creditor cannot provide one of these documents.[22]

If the court approves the enforcement application, a judicial order of sale or auction is issued. The court will normally arrange the appraisal and auction and the enforcing party will go through a series of steps that include notice, publication, due diligence, and inspection before the sale takes place. In an increasing number of jurisdictions,[23] local courts have brought judicial auctions online by listing the properties on their websites or on *Taobao.com* (the largest online shopping platform owned by the Alibaba Group) and are accepting bids electronically.

Once a property is sold successfully at auction, sales proceeds will be distributed according to the priority of interests, with secured interests being paid first. The priority of security

[19] *See* Chen, Albert H. Y. "The Law of Property and the Evolving System of Property Rights in China." Social Science Research Network. May 25.

[20] Wuquan fa [Property Rights Law], art. 195.

[21] Minshi Susong fa [Civil Procedural Law], art. 196, 197. (promulgated by the Standing Comm. National People's Cong., Aug. 31, 2012, effective Jan.1, 2013), (P.R.C).

[22] Wallace, Walker, Bingna Guo, and Sylvia Shi. 2014. "Enforcement on Defaulted Loans and Mortgage on Real Property under Chinese Law." O'Melveny & Myers LLP. Available online at:http://www.omm.com/files/upload/TICL_Enforcement%20on%20Defaulted%20Loans%20and%20Mortgage%20on%20Real%20Property%20under%20Chinese%20Law_Feb_2014.pdf

[23] Although different provinces have different rules and ordinances, they do not have the power and authority to legislate laws and statutes.

interests is determined by the time of its creation. Under Chinese laws, mortgages and security interests must be recorded to become effective and enforceable. Therefore, the priority of mortgages is determined almost exclusively by the order of the registration entry on the title certificate. Unrecorded mortgages are treated as unsecured interest and will be paid *pro rata* after all the secured debts are satisfied. On the other hand, if sales proceeds do not fully cover the debt, the mortgagee can sue the debtor for any deficiency and obtain a judgment to collect out of the debtor's other assets. Upon full payment of the auction price, the buyer will receive legal documents from the court and apply for registration of the title at the local title registration office.

The general structure of an enforcement action is similar in many aspects to a judicial foreclosure sale in the U.S. Although the enforcement action on its own can appear to be simple and straightforward, in reality, mortgage enforcement is rarely a clear-cut, standardized process. It may involve multiple parties and is often entangled in a myriad of different transactions, claims, and relationships. Any party of interest who raises an objection based on a substantive issue can easily interrupt or defeat the proceeding. In addition, discrepancies of local rules and practices impose additional uncertainties and risks on the secured creditor in realizing their rights against the collateral.

**The Problem of Junior Mortgages**

An example of uncertainty resulting from local discrepancies in the law is the status of junior mortgagees. Different from the practices in the U.S., a second mortgage is not universally allowed in China. Although the NPL permits junior mortgages on the residual equity of the property that has taken on a mortgage, in practice, a jurisdiction's title registration ruling can effectively block its creation. Most Chinese cities are reluctant to allow registration of a second mortgage on a property, especially for residential real estate. In fact, merely a handful of cities permit registration of junior interest, including Wenzhou, Ningbo, Shanghai, and Beijing.[24] Beijing only withdrew the restriction recently, which is stipulated to respond to the urgency of easing credits under the pressure of its housing market.[25]

Because a mortgage is created upon registration, junior mortgages are *de facto* prohibited in cities that do not accept second mortgage registration. In these jurisdictions, the first mortgage must be paid off before the property can be used to secure a different debt. The legal basis is that Chinese law requires the value of the mortgage property to be greater than the amount of the debt it secures.[26] Local governments simply refuse to register any junior mortgages to avoid fraudulent property appraisal and egregious underwriting practices.

Even in cities that authorize the registration of junior mortgages, junior lenders frequently encounter barriers in registration and enforcement of their interest. First, senior lenders rarely offer assistance with the registration of junior interest. Senior lenders, most of which are

[24] Guanyu Guifan Fangdichan Shunwei Diya Gongzuo De Ruogan Yijian (关于规范房地产顺位抵押工作的若干意见) [Several Opinions on Formalizing Real Estate Junior Mortgages] (promulgated by the Wenzhou People's Government Office, May 17, 2013).
[25] As some of my interviewees hold sensitive positions in government, in the court system or in the banking sector, I have chosen to refer to all contacts anonymously out of courtesy for the generosity of all who were willing to meet with me. This observation is based on my interview with a senior banker in the mortgage enforcement team at the Industrial and Commerce Bank of China (the ICBC) in May, 2015.
[26] Danbao fa [Guarantee Law], art. 35, (promulgated by the Standing Comm. Na'l People's Cong., Jun. 30, 1995, effective Oct.1, 1995), (P.R.C).

state-owned commercial banks, normally keep physical possession of title documents and refuse to release them to the debtor and junior lenders. To facilitate junior mortgage registration, some city governments, such as Wenzhou's, have enacted rules that require senior banks to cooperate with junior lenders on registration.[27] Nevertheless, banks often insert proactive built-in languages in the loan agreement, requiring the senior lender's consent when the owner-mortgagor seeks to transfer any interest in the property. Taking a second mortgage against the equity of the property is almost always prohibited in the loan covenant.

Furthermore, banking regulatory agencies and senior banks usually require their lower branches to seize original copies of the mortgaged property's title documents to prevent unauthorized transactions. As banking regulatory agencies are directly responsible to the central government, they are independent from the local administration and are of a higher authority to a prefecture-level city. Thus, lower banks can rely on the regulations and practices approved by the banking regulatory agencies as a reason for not conforming to the city's policy.

Junior lenders also encounter barriers during enforcement. Courts have disagreed on whether the junior mortgagee may begin an enforcement action unilaterally, or if the junior interest holder must obtain the senior creditor's consent before initiating the proceeding. In addition, junior interests are often subject to a more stringent scrutiny during the enforcement action. Most of the time, a junior mortgagee with sufficient funds will pay off the senior mortgage and become the first in line of the priority of payment, which then allows the junior interest holder to begin the enforcement process.

Therefore, creating a junior mortgage is not the best option to obtain or provide real estate financing considering the barriers and uncertainties under the current system. Small lenders such as financing companies and small loan companies often avoid generating second mortgages. They use a variety of workarounds, such as structuring the mortgage in the appearance of a sale. For instance, a lender would enter into an agreement with a debtor and keep the title certificate. When the debtor defaults on the second mortgage, the lender will immediately record the title and take ownership.

The legitimacy of this arrangement is contestable. Both NPL and previous Guarantee Law expressly forbid transferring the mortgaged property to the lender upon the debtor's default without a sale or auction.[28] Nevertheless, lenders can easily skirt around the rules by creating a separate agreement of sale executed after the creation of mortgage. This practice is prevalent especially in places where a junior interest cannot be registered. Although these transactions do not increase additional risks to subordinate lenders, debtors are in a more vulnerable position. They are more likely to go underwater and risk losing their homes without the process of redeeming the properties.

The uncertain status of junior creditors and the practical difficulties in registration and enforcement of the junior interests have significant implications on mortgage financing in China. First, contrary to the legislator's intention, failure to recognize junior mortgages under the law as legitimate, protectable interests, does not discourage their creation but in turn lead to more informal and off-balance sheet lending so long as there is a demand to finance

[27] *Id.* at note 24.
[28] Wuquan fa [Property Rights Law], art. 186.

against the residual equity of a property. Second, these informal loans, backed by mortgages or other real estate interests, complicate the titles of properties. They add uncertainties to the ownership and cause potential disputes and delays to the normal enforcement process. Third, the large volume of informal mortgage arrangements increases the systemic risk in the banking and financial sectors. Most off-balance sheet loans, which are ultimately backed by mortgages, are highly leveraged. Under a slowing housing market and a recession, owners and businesses will face shrinking cash flow and escalating monthly payments, leading to waves of defaults that can trigger meltdowns in other sectors of the economy.

**Problems in the Current Enforcement System**

Despite persistent legislative efforts to improve enforcement procedures, the judicial enforcement system in China is lengthy, onerous, does not generate adequate sales price of the property, and fails to deliver marketable title after the parties go through the legal process.

Time

The enforcement process is lengthy and time consuming. In spite of the deadlines and schedules provided under the CPL, which requires enforcement action to be finalized within six months, in reality, judicial sales take much longer to conclude. On average, a simple, smooth and quick sale takes about eighteen months to two years to go through the entire process. When there are multiple parties and different interests involved, the process is expected to last even longer.

For example, if a property is an owner-mortgagor’s only residence, Chinese court will review the hardship of the owner and will grant a six-month grace period for the owner to move out. In addition, the court will require the mortgagee to provide housing of equivalent quality for the owner.[29] If there are tenants occupying the property, the court will need to review the creation and validity of the lease. If the lease is created prior to the mortgage, the lease will remain intact on the property after the enforcement process. Leases are especially difficult to deal with when commercial real estate is involved, as there can be multiple subleases and interested parties across a longer time period. All of these scenarios can generate more disputes and objections that will interrupt the enforcement process and increase the cost and burden on the creditors.

Hidden costs

Hidden costs that are involved in a judicial auction affect both efficiency and fairness and can generate disagreements and anger during the process. These are costs and fees, including taxes incurred in a judicial auction and are not disclosed to the buyer in advance. The auction price or reserve price listed on a property waiting to be sold does not include taxes and fees, which are assessed at closing. Effective taxes and fees can add up to 10 percent of the purchase price.[30] Many buyers, realizing that they will be paying significantly more than they expect, refuse to agree with the payment or demand refund. Some properties end up being re-auctioned when disputes cannot be settled. To address this problem, several cities clarify the categories of taxes for which the buyer is responsible and assess the amount before the

---

[29] Zuigao Renmin Fayuan Guanyu Renmin Fayuan Zhixing Sheding Diya De Fangwu De Guiding [Provisions of the Supreme People’s Cout on the Execution of the Mortgaged Homes by the People’s Court ] art. 2. (promulgated by Supreme People’s Court of China, Nov. 14, 2005, effective Nov.14, 2005).
[30] *Id*. at note 23.

auction begins. Wenzhou is again the forerunner of cities that have identified specific amount of taxes and fees for which the auction buyer is responsible.

Apart from taxes and auction costs, which can be known if a buyer is knowledgeable or if he consults with a lawyer or a tax professional, there are other liabilities involved in the property that are not detectable even to auction specialists or the judge who hears the case. This is because not all charges, penalties and liabilities of the property are reflected in the title document. The information is not consolidated or searchable at the local registration or land department, but are scattered in various parts of public records maintained by different administrative departments. Because some charges in nature are personal debts of offenders, they are not recorded as a lien on the title when real property is involved. These charges are in reality paid off by the buyer. Due to the lack of communication between the court and the administrative agencies, unless the buyer has actual knowledge regarding the property, there is no feasible way for him to find out the backlog of debts, if any, before making the bid.

Auction professionals

Conflict of interest and corruption among auction professionals, including auctioneers and appraisers, is another common problem that impairs the efficiency and fairness of the judicial auction. The auction and appraisal professionals must be chosen from the court's list of accredited agencies. The court usually appoints the professionals or selects them randomly, though the parties sometimes choose the persons if they reach agreement. The system is designed to prevent outside influence and ensure objectivity and transparency in the auction process. Unfortunately, accreditation can create opportunities for unqualified agencies to engage in bribery, and can also stifle competition. After auction specialists are selected, the court will defer to the experts' judgment on organizing the auction and will not actively supervise the sales process.

To buyers and other parties alike, a judicial auction creates the impression of the court's engagement in the process, overseeing the order and the conduct of professionals. They rely on the credibility and authority of the judge as well as the experts' information and opinions. Although the CPL provides that auctioneers and appraisers are agents of the court serving the public interest, in reality, they are rarely disinterested and are, instead, fee-earning contractors performing auction-related services. Since higher property values means higher fees to the professionals, appraisal value and floor price of the property are set unreasonably high. Although the parties can raise objections against the auction agency if it is unqualified or if there is a material ethics violation, or the conduct constitutes malpractice under the Auction Law, in most situations the remedy is limited to a reappointment and a restart of the auction, only causing more delay and adding more costs to all parties involved.
Moreover, even when the parties sue the auction and appraisal agencies, proving the case and showing damages is difficult. If the plaintiff sues on contractual grounds, most auction and appraisal agreements provide a minimum duty of diligence and exempt all representations and warranties on the part of the professionals. The strong profit-making incentives and the absence of duty of care and liability among the auction professionals significantly hinder efficiency of the enforcement process and harm the reputation and authority of the court.

Price generated from enforcement is low

Although there are no empirical studies on auction prices, statistics at many courts shows that property sales prices generated from judicial auction is very low. Many properties are sold at a fraction of their fair market value. The low prices can be attributed to a variety of reasons. To begin with, advertisement is ineffective and fails to attract enough buyers to participate in the auction. Traditionally, announcements of auction are only published in the court's newspaper, which is a specialized paper not sold at newsstands to the general public. Most judicial auctions do not even result in bids. The adoption of the online auction system has alleviated this problem to some extent. Nonetheless, online auctions have only been made available in the past two years and mostly in economically developed regions. Combined with the general distrust of making large transactions over the Internet, online auctions still face challenges in terms of attracting interested participants.

Furthermore, high reserve prices result in a higher possibility of auction properties going unsold. Chinese law requires a reserve price not lower than 80 percent of the appraisal or market value in a first-time auction.[31] If the property goes unsold, the starting bid for the next auction can be lowered by up to 20 percent of the first reserve price. Real estate auctioning is limited to three total attempts. Thus, it is strategic, and in reality, the practice for buyers to wait for an automatic discount and to not enter the race at least until the second attempt of the auction.

Additionally, the requirement of putting a five percent down payment for the full purchase price before the auction, along with making a full cash payment of the remaining balance, excludes many buyers who have good credit and are eligible for mortgage finance. Some cities have started to provide financing for successful bidders at closing, but it has not become the norm in most regions.[32]

Finally, the lack of information and transparency regarding the listed property intimidates potential buyers from entering the race. The advertisement on the property being sold does not contain the details that the buyer would normally inquire about when dealing with a broker. Moreover, judicial auction is generally associated with the image of distress sales that involve problem properties. The uncertainty and bias against the auction property further discourages prospective buyers and results in lower bids.

<u>Auction sale fails to produce marketable and recordable title</u>

The most critical problem in the current system is that judicial auction does not generate a marketable and recordable title. A judicial auction or sale extinguishes all lower interests and wipes out any court order of seizure on the property. However, it does not ensure that all defects on the property are cured, such as those inherent in the underlying land use right as well as violations of local land use rules and ordinances. In those cases, a judicial ruling of a confirmation of sale does not guarantee that a buyer successfully registers the title. The buyer accepts the property "as is" and assumes all the risks associated with the property. In some cases, a buyer may essentially end up with a property that he cannot take ownership of. The three most common title defects are analyzed as follows:

[31] Zuigao Renmin Fayuan Guanyu Renmin Fayuan Minshi Zhixing Zhong Paimai Bianmai Caichan De Guiding, art. 8, [Provisions of the Supreme People's Court about Auctioning or Selling off Property by the People's Courts in Civil Enforcement](promulgated by Supreme People's Court, Nov.15, 2004, effective on Jan.1, 2005).
[32] Wenzhou's Lucheng People's Court entered into an agreement with four commercial banks including the Bank of China—Wenzhou Branch on December 10, 2013, providing mortgage financing for eligible buyers at judicial auctions.

**Defects in the land use rights.** This defect is among one of the big controversies in China's dual-track property registration system. A brief summary of the land use regime is needed to understand how it raises unique problems in mortgage enforcement.

In China, all urban land is owned by the state. More specifically, land in each city is controlled by the city government. Private parties who want to build on the land must first obtain the respective land use right from the government. There are two general types of land use rights: allocated land use rights and granted land use rights. Allocated land use rights are distributed by the state for an indefinite period of time at no charge or for a nominal consideration. Theoretically, it cannot be transferred, mortgaged or leased, and is subject to revocation at any time. Nevertheless, as buildings are separate property interests from land use rights, Chinese laws now permit buildings on allocated land to be transferred, mortgaged and leased, subject to approval by competent authorities.

Granted land use right, by contrast, is distributed by the state to a transferee for a land transfer fee. The term of duration of the granted land use right depends on its usage, with residential land use right having the longest term and industrial land use right having the shortest.

The defects in land use rights can occur in two scenarios. First, a buyer could buy a building constructed on allocated land. The buyer may be allowed to cure the defect by paying the land transfer fees and converting the allocated land use rights to granted land use rights. However, the buyer's option to cure depends on whether the local government is willing to accept his payment and then release the land.[33] Although most of the time governments are willing to do so, there are cases where the government has made new land use plans and refuse to grant the land to the buyer. In these latter circumstances, the buyer will be left with a property that cannot be registered or transferred, along with a right to sue for damages against whoever is at fault during the sale. What can be even more devastating is that local government is free to take back the allocated land without having to pay any compensation. This puts the buyer in a precarious position that has no effective remedies under the current law.

Second, the buyer may have bought a property where the function and use of which is not conforming to the land use right where the building is sitting. For example, buyer may have purchased an apartment unit that is built on the land for industrial use. In China, industrial and commercial land use rights are much cheaper than residential land use rights. They also come with a shorter term of use. Different from traditional cumulative zoning in many states in the U.S., which allows any higher, less intensive use of the properties in a lower, more intensive zone, theoretically the right to use land for industrial purpose does not permit buildings to be used for residential or commercial purposes. Nevertheless, in the past two decades when the housing market was booming nationwide, thousands of residential apartments were built on nonresidential land. Similarly, numerous hotels, retails, and office buildings were erected on industrial land in the high-tech parks and former factories. The discrepancy between the building and the underlying land gives rise to a number of problems

[33] Yan, Alice. 2015. "Red-ink row: Chinese town government's land ownership dispute sparks public spat with court after auction approved." *South China Morning Post*. December 17. Available at http://www.scmp.com/news/china/society/article/1892393/red-ink-row-chinese-town-governments-land-ownership-dispute. (A town government disputed the court's ruling of sale of an industrial building on the allocated land. The town government issued an angry protest on the local newspaper warning buyers of its plan of taking the land back.)

and uncertainties. In the context of mortgage enforcement, buyers are again exposed to a variety of risks. Buyers cannot receive marketable title as well as proper registration. Unlike the first scenario, local government does not have the right to take back the land. However, it does have the power to make the buyer pay to convert the land use right to the one that fits its actual use and purpose. If the buyer refuses to pay, the government can order demolition of the property that does not comply with the law.

**Penalty and charges of the previous owner.** When the construction or use of a property is in violation of local ordinances and rules, local government will impose penalties and charges on the property owner. Its function is similar to housing and building code violation under the U.S. law. What is different is that Chinese law does not authorize the government to file a lien on the violator's property if the penalties are not paid. Because the penalties are essentially against the persons of the owner-mortgagor, they are not extinguished after the judicial sale.

The *in personam* nature of the government penalties and charges means that the government can only sue violators for the debt but cannot enforce its claim against their property. In many cases when mortgage enforcement happens without the mortgagor-defendant, the government cannot participate in the enforcement process or join in the distribution of the sales proceeds. When the mortgagor is missing or is unable or unwilling to pay, the governmental claim is rendered uncollectible. In reality, local government will prevent a new registration on the property unless its penalties and charges are cleared. To receive timely registration, auction buyers often end up paying the previous owner's debts to the government.

**Unfinished construction projects.** Unfinished construction projects almost always involve unresolved legal issues and large indebtedness to the government. However, even if the ownership is good and clear, in most cases a buyer will need to acquire various licenses, permits, and qualifications from different government bureaus before it can reuse, modify, or even demolish the property. Therefore, the only bidders of such projects are prearranged buyers, mostly resourceful or influential big developers who have already reached a deal with the government and are merely going through the auction process as a formality. Moreover, the price sold to these buyers is usually much lower than the fair market value, compromising the interests of its creditors.

The common problem among the three major types of title defect is that it is difficult for a non-insider buyer to obtain accurate information on a property, and a buyer cannot rely on the professional statements in the judicial auction. First, a lot of important information regarding the property is not recorded in the title registration and is unable to be searched even when the buyer exercises reasonable effort. Second, judges of the enforcement action only examine the formality of the mortgage and the main loan agreement, such as whether the creditor is eligible to enforce on the property, whether the mortgage is validly created, and whether the obligations and interests are lawful and conscionable.[34] The court does not examine the title of the property. Third, auction and appraisal professionals exercise minimum care when conducting due diligence and are expressly exempt from all representations, warranties, and liabilities on the facts and knowledge of the property information. Fourth, there is no title insurance company that insures against financial loss from defects in the title.

[34] Mingshi Susong Fa [Civil Procedural Law], art.196.

**Section Summary**

The Chinese mortgage enforcement system is a relatively new process. It was in 2012, after enactment of the revised CPL that the enforcement system became a specialized legal proceeding. The substantive law on mortgages was not stabilized until the enactment of the NPL in 2007. With this short history, Chinese laws have made incredible progress in terms of establishing and stabilizing the system.

But there is yet much more to be done. Ambiguity exists in the substantive laws on mortgage and mortgage enforcement, particularly when it comes to junior mortgages. Junior mortgagee's right, although expressly authorized under the NPL, is unclear and is not treated equally by the courts. The substantive uncertainty is then reflected upon the procedural requirements of enforcement, which contains more blank spaces and additional barriers to the realization of junior interests.

The law's unwillingness to deal with these types of informal lending does not halt the practices but only leaves the difficult questions unanswered. The existence of the various arrangements of informal and off-balance sheet loans, which are ultimately backed by mortgages, adds further complications to ownership of the property. When these loans get into trouble of repayment, the ripple effects of defaults will transmit to the default of the mortgages, and vice versa when the mortgages are the ones to become delinquent first. Without a crystalized legal understanding of junior mortgages and many of these quasi-mortgage transactions, courts are not well equipped to respond to the controversies quickly enough to ensure efficiency during liquidation and to transfer of the collaterals to a new owner.

## Mortgage Enforcement and the Local Government

Local government is a crucial and inseparable participant in the mortgage enforcement process. Under the public law regime, local government as the regulator of land in a community has legitimate interests in managing the properties, to ensure that they are in compliance with the land use regulations and with the urban planning requirements, and to punish owners and users who violate the laws.

Meanwhile, after fees and charges are legitimately imposed on the violators, local government essentially becomes a creditor to the persons who violate the law. As a result, private laws that govern debtors and creditors can now come into play. Because penalties and fees are not liens attached to the properties, the local government is an unsecured creditor of the owner-mortgagor. The status of an unsecured creditor gives local government the right to apply for a court order to seize the debtor's assets, but not granting it the same rights and legal standing as a mortgagee to enforce on the property directly. After the property is sold, the government cannot really go after the delinquent mortgagor, since the latter often go bankrupt and is depleted of all assets and financial means.

This is one of the reasons why local governmental agencies are not enthusiastic about assisting buyers with registration when a problem property is sold at a judicial auction. Someone must pay for the debts. As all orders of seizure and freezing on the property are extinguished after judicial sale, local governments would have no control over the debtor-violators and the property. Naturally, the administrative agency would hold the new registration of the property hostage unless all fees and charges are paid. The method is effective and convenient. Most buyers would pay for the demand because they cannot afford losing the title to the property that they have just purchased. It is without legal basis and unfair to require buyers to pay the personal debts of the previous owners. As ordinary buyers are usually in a disadvantaged position of information and often relying on the description provided by auction professionals, it cannot be argued that the buyer has bargained for these debts and defects in the property.

The deeper problem that is revealed here is the conflict between the administrative powers of local government and the judicial authority of the local court. This conflict is inherent in China's political structure and originated from its political philosophy that can be traced back to thousands of years of history. As many scholars have accurately observed, China is an administrative state.[35] The Chinese political system does not adopt a separation of powers and the court is essentially a governmental department with judicial functions within its large bureaucratic structure. When courts and administrative authorities have conflicts of priorities, judicial decisions are likely influenced by the authority's will, while the enforceability of a court judgment depends on the cooperation of governmental agencies. This paper does not attempt to argue whether the current governmental structure or political philosophy is good or bad for China since it is a much bigger discussion beyond the scope of the topics. However, it is important to keep in mind that Chinese laws are based on a set of distinctive values and presumptions.

In the context of mortgage enforcement, the court cannot exercise coercive power against the local government. The judicial ruling and confirmation of auction does not bind the government to assist buyers with title registration. On the other hand, the current laws on mortgage enforcement do not consider how the government's right to payment is placed in the enforcement process. The government is essentially exercising self-help against the mortgaged property using their registration power at the expense of the buyers and the other creditors.

Suppose the charges, fees, and unpaid taxes can become a secured interest on the property, local government will have the legal standing of a secured creditor to participate in the judicial process. If the secured claim is made first in priority, then the government can enforce the mortgage and get paid ahead of all other interests. In this way, local governments' interests can be addressed without clogging the transaction. This is the approach taken by many states in the U.S. All jurisdictions allow local governments to file a lien on the violator-debtor's property. In an increasing number of states, delinquent property taxes and nuisance abatement fees are by law becoming liens that attach to the property. This gives the government the right to sue against the property and acquire those properties that are vacant, abandoned and have become a nuisance to its community.

Chinese law has yet to impose property taxes on residential property owned by individuals. However, there is a property tax on real estate held by enterprises as early as 1986.[36] Enterprise property taxes are calculated in two ways; either on the residual value of the

---

[35] *See generally* Clarke, Donald C. 2003. "Puzzling Observations in Chinese Law: When is a Riddle Just a Mistake?" in *Understanding China's Legal System,* ed. C. Stephen Hsu, 93–121. New York, NY: New York University Press.

[36] Zhonghua Renmin Gongheguo Fangchanshui Zanxing Tiaoli [Provisional Regulations of the PRC on Real Estate Tax](promulgated by the State Council, Sept.15, 1986, effective on Oct. 1, 1986).

property or on the rental income or other profits it generates.

The enforcement of enterprise property taxes has not encountered much difficulty because corporations are not likely to become property tax delinquent for several reasons. First, corporations are reviewed by the commerce and taxation departments each year. Failure to comply with taxes will result in a revocation of a company's certificate or other licenses. In addition, the legal consequences of noncompliance are stringent, including penalties and even criminal prosecution on the corporation and its managers. Therefore, corporations are unlikely to have unpaid taxes accumulate over years.

Second, the largest cost in a property is the cost of land use rights. Most corporations' office buildings and factories are built on industrial or commercial land or on "free" land allocated by the local government. Industrial or commercial land use rights have shorter durations and are much cheaper to obtain than the 70-year residential land use rights. Many city governments essentially provided the industrial land for a nominal rent to attract investment and encourage industry to settle in their jurisdiction.[37] Allocated land use rights often have no duration, theoretically can be revoked at any time by the government, and generally cannot be transferred, and thus are considered as having no market value for tax purposes. Therefore, the overall amount of property taxes is not significant or burdensome to a corporation.

Third, property taxes paid by corporations can be deducted as expenses, creating additional incentives for companies to pay the property taxes for accounting and tax planning purposes. With tax incentives and severe legal consequence of nonpayment, corporations are unlikely to default on their property taxes. Although corporate property tax is also not like a tax lien that can encumber the property, tax authorities generally have no problem of collection and rarely need to go through enforcement.

However, the same ease may not apply to residential properties due to a different set of presumptions and problems. As property tax reform has been brought on the legislator's table to provide alternative, stable sources of income at the local level, a functioning mortgage enforcement system will have significant implications not only on protecting the legitimate financial interests of the private parties, but also on ensuring collection and enforcement of the public interest—property taxes. It is key that lawmakers and scholars ask the hard questions now and develop a national strategy before the property tax system becomes reality in the foreseeable future.

## Overbuilding and Vacancy in Selected Chinese cities

The communist party of China recently unveiled its new economic plan, which identifies "reducing housing inventory" and "stabilizing the housing market" as the major economic tasks in year 2016.[38] This reveals that oversupplied and vacant housing inventories have attracted national attention.

[37] See Tao, Ran. 2012. "The Issue of Land in China's Transition and Urbanization." Working Paper. Cambridge, MA: Lincoln Institute of Land Policy. (Local government supplies land to manufacturing investment for the latter's ability to generate value added tax and its spillover effects on local service sectors, which implies higher local business tax revenue and further land leasing revenue for commercial and residential development.)

[38] Xinhua Net. "CPC unveils major economic tasks to boost growth." *China Daily*. December 14. Available at: http://www.chinadaily.com.cn/china/2015-12/14/content_22712926.htm

The concern is not unwarranted. A study by the International Monetary Fund on residential real estate markets in China estimates excess housing units nationwide would take five or more years to be consumed.[39] In some cities, housing inventories will not be reduced for the next ten years.[40] Ordos is no longer an isolated, extreme case. More and more cities of different economic and geographic conditions are struggling with the problems of overbuilding and vacancy; some are on the fringe of crisis.

The excessive housing inventory and high rates of vacancy in many cities is a result of misalignment of a city's real estate and urbanization development and its social and economic conditions, as well as misalignment of people's hope and expectations and the city's reality. It has to do with both the market failure of the private sector as well as the intentional public policy. Despite overproduction and a declining manufacturing and industrial sector, fast-expanding urban districts and rising land prices create an illusion of wealth and prosperity. Real estate seems to be the only profitable and "safe" investment, attracting more people and businesses to bet on the house. Meanwhile, local governments faced with increasing gaps of tax revenue and expenditures are still relying on the land sales profits as well as the GDP generated from the construction sector. They increasingly treat land as an asset of investment and have strong incentives to keep the housing prices high. The result of these distorted incentives is overbuilding and overpriced real estate. The large numbers of commodity housing has far exceeded the need and buying power of local residents and new city immigrants, carrying deep and far-reaching consequences of vacancy, waste and deterioration.

## Understanding Inventory and Vacancy

To demystify the problem, first it is important to define the key concepts. Unfortunately, the terms of inventory and vacancy are often used without a clear definition; their usage and application are inconsistent at best.

### Defining inventory

Inventory is often measured by the ratio of floor space unsold to floor space sold during a certain time period.[41] The two common sources of data used by many studies are from the National Bureau of Statistics and the local housing bureaus.[42] The official data on housing inventory can be further categorized into two types of inventories. First, there are unsold properties that have finished construction; second, there are properties that are not finished but are eligible for being sold. In China, unfinished apartments, if they meet certain criteria established by the law and local ordinances,[43] can be sold and mortgaged. This is called

[39] *See* Chivakul, Mali, W. Raphael Lam, et.al. 2015. "Understanding Residential Real Estate in China." Working Paper. International Monetary Fund.
[40] *See infra*
[41] *Id*. at note 39.
[42] *Id.*
[43] Art. 44 of Urban Real Estate Administrative Law provided five requirements for the presale of unfinished properties. These are 1) receiving free, clear and marketable "title" to the land, i.e. constructive land use rights; 2) construction permits; 3) Funds put for construction of the houses have exceeded 25 percent of the total project investment and a construction schedule and date of completion has been set; and 4) presale registration and a presale permit issued by the local building bureaus. On top of the national requirements stipulated by the law, each city government has flexibility to devise the specific presale requirements; these requirements can vary significantly and have substantial impact on the production and growth of the housing inventories. For example, many cities like Harbin used a "Zhengfuling" (literally translated as "ground zero", meaning that a

presale and the mortgages that they are secured by are presale mortgages. The average construction cycle for a proper, well-financed residential project on average will take ten to twelve months to complete.[44] The second type of unfinished inventory exclusively refers to the floor spaces of presale homes and does not include unfinished projects that do not meet the presale criteria.[45]

The numbers and ratios of the two types of inventories have different implications and can reflect the history and trend of a city's housing market. For example, in Harbin the ratio of the unsold to unfinished inventories is five to one.[46] Analyzed along with the quantity of the properties, this ratio is consistent with the city's accumulated number of unsold properties over the years and a slowing down of new projects under construction.

It should be noted that the public source of data does not include many other types of inventories. First, the statistics does not calculate land to be developed by the real estate companies and unfinished projects that have not met the presale criteria. Second, it only assesses properties that are registered and does not cover information on the "informal" properties outside of the system, including the small property right housing and construction that are not approved by the government, i.e. "unlawful construction." These unfinished, off-record properties should not be ignored or underestimated for they constitute a large portion of the real estate market and affect the livelihood of millions of families. The lack of reliable data on these properties creates additional challenges to estimate and analyze housing inventories in China.

Defining vacancy

Compared to inventory, vacancy is even more challenging to determine and its concept and scope more ambiguous. Vacancy can be defined as property that is unoccupied or unused for a certain period of time.[47] Unlike inventory, which is essentially a unit of quantity measured by the floor space or the number of units, it is challenging to reduce vacancy to a number. It is a three-dimensional problem that must be considered in relation to a set of factors regarding a region's economic, geographic and social conditions. This paper discusses vacancy in a broad sense that encompasses unoccupied and unused property, including sold and unsold, residential and nonresidential properties.

Although vacant properties are prevalent in most Chinese cities, there is a general lack of comprehensive data on its scale. Vacancy rates provided by the National Bureau of Statistics are limited to the vacancy rates of unsold residential property. The data excludes unoccupied second-homes, commercial real estate, and industrial parks, as well as a large number of buildings that are off-record. The actual vacancy observed on the ground is much more severe than what the data represents. Further, there is a dearth of surveys and studies on its impact on the local housing market (for example, on housing prices) and on the surrounding

---

property can be sold once the foundation of the apartment building is laid). In contrast, Wenzhou and Nanjing adopted much stricter presale criteria that require more than 75 percent of the completion of the project before a presale permit is issued.

[44] Based on interviews with real estate developers and their in-house counsels in Nanjing, June, 2015.

[45] The variances in each city's presale criteria have created discrepancies on the housing inventory data even when a city includes the number of unfinished units in its assessment. Therefore it is challenging to compare with different cities' housing inventory situation. It also creates difficulties for the Central Government to accurately assess the size of the housing inventory on the national level.

[46] *See supra* at note. 14.

[47] Alexander, Frank S. 2015. *Land Banks and Land Banking.* Flint, MI: Center for Community Progress.

neighborhood.

## Inventory and Vacancy in Selected Cities—A Survey

This session provides an analysis of three cities, all of which are facing a problematic and significant amount of oversupplied housing inventory and vacancy within their urban areas. On the other hand, each city has its unique characteristics. The first city is Wenzhou, which is a third tier, prefecture-level city that experienced a regional housing crisis in 2011. The second city, Harbin, is a provincial capital traditionally known as a Rust Belt city that is now struggling with a slowing economy and a declining housing market. The third city, Nanjing, is also a provincial capital that has a similar magnitude of overbuilding and vacancy but has yet to experience decline or crisis.

### Wenzhou

Wenzhou is the third largest city in Zhejiang province in eastern China. The city is known for its commercial culture, vibrant business activities and export-manufacturing industries. The flip side of the risk-taking entrepreneurial spirit is recklessness and greed. Wenzhou is among the first to have experienced a regional housing crisis as early as 2011, when housing prices dropped by 30 to 50 percent, depending on the development projects and according to different sources of data. It has reached a general consensus that Wenzhou's housing crash is attributed to rampant speculating activities combined with an extremely volatile private borrowing market that pushed the property prices too high within a short period of time. Home price per square meter in Wenzhou has more than tripled during 2006 to 2011. Land sales and real estate development also reached several-fold increases during this period.[48]

When the housing bubble burst, like in many cities in the U.S., Wenzhou was also facing a local mortgage crisis in spite of a lack of coverage in the mainstream media in 2011. Most defaults happened in informal loan instruments such as intercompany loan guarantees, which were highly leveraged and were backed by mortgages. In 2013, on average a judge in Wenzhou closed 380 financial and debt enforcement cases, the highest record being 480.[49] Forty percent of these cases were tried without the defendants' appearance in court. Although the default rates on mortgages did not immediately shoot up, the number of properties sold at judicial auction has increased dramatically since the end of 2011, and the number is still growing.[50]

The city government of Wenzhou initiated a number of policies that targeted easing lending criteria among local banks to ensure availability of credit and relaxing regulatory restrictions on property purchases. Wenzhou is the first municipality to expressly approve private borrowing in the nation in 2013. It was among the first cities to permit registration of a second mortgage and to bring judicial auctions online.

---

[48] The data concerning Wenzhou is collected from internal unpublished governmental sources.

[49] "Wenzhou Jinrong Anjian Baozeng [Sudden increase of financial cases in Wenzhou]" Hangzhou News, June 20, 2013. Available in Chinese at http://biz.zjol.com.cn/05biz/system/2013/06/20/019414357.shtml. This data is confirmed by the author in an interview with Wenzhou Intermediary People's Court.

[50] *See* Wenzhou Zhongji Renmin Fayuan Gongzuo Baogao, 2010, 2011, 2012, 2013, 2014 [Wenzhou Intermediary People's Court Working Report 2010, 2011, 2012, 2013, 2014], available online at http://www.wzfy.gov.cn/ygsf/gzbg/index.shtml. In the author's latest interview with Wenzhou Intermediary People's Court in Spring 2016, the number of judicial sales has reached its peak in the 2015 and is expected to grow in 2016 based on the number of cases in the first quarter.

These new measures implemented and tested by the Wenzhou government to assist in the housing market's recovery have closed some loopholes in the system and have increased efficiency in real estate transactions. Wenzhou government and the local courts have facilitated constant and routine communication and cooperation to address disputes and to come up with new policies. The level of cooperation in Wenzhou makes it an outlier compared to many other cities in China.

In addition, and perhaps most importantly, Wenzhou intentionally kept the new land supply low during the housing recession, effectively keeping the number of inventory and vacant properties in control. In 2016, although sales have not been robust and home prices in Wenzhou have only restored to their 2009 level, the local housing market has achieved stability and recovery at the fifth year after the crisis.

Harbin

Harbin is a provincial capital of Heilongjiang Province in China's northeast rustbelt. Known for its bitterly cold winters and as home to many state-owned heavy industries, the city has seen stagnation and the waning of its housing market in recent years. Overbuilding has become a major challenge in the city as well as in the towns and counties that surround it. The new Jiangbei district has become another ghost town with magnificent buildings and developments but not enough businesses or residents. Statistics forecast that the excess housing inventories in the urban area would take eight years to consume under ordinary demand-supply conditions. The demand is even weaker in its adjacent towns; some have built apartment buildings that can settle ten times the size of its current population.

Many districts in Harbin have seen different degrees of vacancy. The Harbin city government has done research that assesses the vacancy rates of the local residential apartment complexes. Relying on water usage and electricity bills of 137 residential development projects over a period of five years, from 2008 to 2013, the research estimates that 20 percent or more of urban housing is uninhabited on average.[51] In the newly developed Jiangbei district, the vacancy rate rises up to a shocking 52 percent.[52] Most of these homes have been sold to individual homebuyers. The high vacancy rates over a long-term period indicate that these homes were purchased predominantly for investment purposes; speculating activities were rampant and are drivers of local property price growth.

Harbin's home prices stopped growing over the past five years. As sales slowed down, smaller real estate developers started to face increasing difficulties in financing as well as stress in repayment of their loans. Informal loans and intercompany loan guarantees have become more and more prevalent and their sizes continue to grow. All of these loans were eventually backed by real estate and mortgages.

Additionally, the risk of default on loans and mortgages also kept rising over the past years. Although the official number of home mortgage defaults is not high, mortgage redemption

---

[51] The data on Harbin housing market are acquired from unpublished government sources and research reports generously provided by the Harbin Institute of Economics.

[52] Zhang, *supra* note 14. The vacancy rate in the selected new city district in Harbin has not been assessed after 2013. According to the author's interview with the Harbin government official in charge of the survey, although owners and renters have filled some empty apartments, vacancy was not reduced on a larger scale as new development projects continued to be built and sold to investors. Overall the official estimated that the situation is worsened rather than relieved.

rate of financing guarantee companies have risen to eight to ten percent in 2015. In previous years it was consistently below two percent. Declining home prices have devastating effects on financial guarantee companies, which are hit first and whose default can have far-reaching impact on the rest of businesses and industries, hurting the region's economy as well as generating more delinquent properties.

The Harbin government is aware of the declining housing market and the consequences of overbuilding and vacancy. However, taking action is slow and difficult. First, despite the phenomenon of overbuilding and vacancy, as well as continuous out-migration of work force and urban population, the city government remains hopeful in their beliefs that Harbin, as the provincial capital and a regional economic center, will be able to attract enough of the migrant population to buy homes. Second, as traditional industry and SOEs are waning and seeing profit losses and even insolvency, the city government needs to count on the real estate sector to provide jobs and revenue.

In addition, vested interests and remnant bureaucratic culture further hinder effective actions or reforms. As mayors and governors are appointed for a term of merely a few years and are eager to establish a strong record of economic performance to be promoted, they are more likely to focus on short-term prosperity and less on the long-term consequences in the future. This is the one reason why Harbin has not taken a more stringent approach on its land supply. Harbin continues to adopt the "ground zero" approach of presale properties, and has not stopped or limited the supplying of land even when the city has already been facing inconsumable housing inventories and striking phenomenon of vacancy in its expanding urban areas. As more homes continue to be built and vacant properties continue to deteriorate, it is foreseeable that the city will face even greater challenges as the storm of housing crisis comes closer.

Nanjing

The overbuilding and vacancy problem in Nanjing is presented in the form of vast urban sprawls.[53] As a regional center radiating several adjacent provinces, Nanjing has a robust economy, good infrastructure and educational resources, and it continues to attract laborers and settlers to the city.

However, Nanjing is not the exception regarding overbuilding and vacancy. Despite the high vacancy rate in its previous new districts in Hexi and Jiangning, Nanjing's urbanization movement goes on by developing yet another new Jiangbei district, as well as consolidating peripheral counties and towns into its expanding urban territory.

There is a general lack of published data on the inventories and vacant properties in Nanjing. As the local market has yet to experience a price decline, the Nanjing government remains optimistic and continues to supply land and expand development into the new districts. What were previous farmlands and small villages are now converted new urban centers filled with apartments and building projects. As land lease prices on average constitutes almost 60 percent of the development costs and is getting increasingly expensive each year, developers are building taller and more compact housing projects to squeeze out shrinking profits.

---

[53] See Feng, L. and H. Li. 2012. "Spatial Pattern Analysis of Urban Sprawl: Case Study of Jiangning, Nanjing, China." *Journal of Urban Planning and Development* 9: 263-269.

Due to strong confidence in the market, there is a general lack of awareness and concern for vacant properties in the city and its newly urbanized districts. In fact, Nanjing claims that it does not have an oversupply based on the sales price and sales volume over the past few years. However, the piling properties and high vacancy ratios impose significant risks in suburban and newly urbanized districts, as their smaller populations and less diversified economies will face major challenges in the consumption and maintenance of these properties.

**Discussion**

The problem of overbuilding and vacancy is experienced in varying degree of severity among all three of the cities in the survey. Depending on the social and economic conditions, some cities are encountering greater difficulties than others. Cities with weaker economies and the pressure of an aging demography are facing greater challenges in dealing with various priorities. Local governments are facing increasing challenges and constraints in making new strategies and initiating reforms. What is common among the local governments in different cities is the lack of awareness of the problem, lack of control, lack of strategies, and lack of funding.

<u>Lack of awareness</u>

Many local governments have shown a lack of awareness on the facts and the logic of overbuilding and vacancy. The general lack of awareness is due to two reasons. First, there is a fundamental lack of accurate and reliable data assessing the scale and impact of inventory and vacancy. Few cities have conducted data collection or surveys. Second, local governments hold a common belief that oversupply and vacancy is only a temporary road bump in urban development that will be resolved naturally when people start moving and filling in the spaces.

Based on the history and experience of cities suffering from urban blight and vacant and abandoned properties, as well as in some Chinese cities that have experienced a housing crash such as in Wenzhou, this assumption has been proved the other way. Cities with a large number of overbuilding and vacancy are more likely to be trapped in a vicious cycle, where vacant properties sitting for years in slow decadence, driving people and investment away rather than attracting them into the area.[54] In addition, vacant and abandoned properties require proper maintenance and can impose great financial burdens on the local government's expenditures and on the community. Failure to understand these consequences in clear financial terms results in a general neglect of the problem among most local governments.

<u>Lack of control</u>

Even when a local government develops an awareness of overbuilding and vacant properties, it does not have effective control over the excessive housing units and vacant properties in the market or owned by individuals. Although not every piece of vacant property requires government's intervention, when there are abandonment of buildings or unfinished projects which can become a nuisance to the neighborhood, or when there are a large number of apartments in an unfinished project that can no longer be revived, with no one taking the

[54] *See generally* Alexander, Frank S. and Leslie A. Powell. 2011. "Neighborhood Stabilization Strategies for Vacant and Abandoned Properties." *Zoning and Planning Law Report* 34(8): 1–12.

responsibility of managing and maintaining the property, local government would need the authority and means to intervene and take control of the property to minimize the harmful impact on the neighboring properties and on the community.

Lack of strategy

There is a general lack of strategy among local government leaders in solving the issue of excess inventories and vacant properties. Some cities have tried to enhance efficiency in the government or create stimulus and incentives in their local housing markets to encourage home purchases. In cities that have adopted these measures, there are results of effectiveness, but still not enough to redirect the market trend.

In its most recent plan targeting oversupply and vacancy, the Central Government has set out four main policies as guidelines for local governments, including further easing of the monetary policy, encouraging migrant workers to buy properties in the cities, removing *hukou* restriction, and encouraging real estate developers to reduce home prices.

Although these propositions are well intentioned, at its current stage more information and research is needed to add enough details for their implementation. First, cheaper rates and large stimulus packages have been used historically and have achieved limited success, as it cannot alter the fundamental supply-demand discrepancy and will increase volatility in other sectors of the economy. Second, although some migrant workers may benefit from an easing *Hukou* requirement and a housing stipend issued by the respective city or town, the vast majority of migrant workers cannot even afford the down payment of an apartment and are usually not eligible for a mortgage. In addition, many cities cannot provide enough jobs as well as schools, hospitals and other services for migrant workers to settle in. Third, real estate developers are profit-driven enterprises and it is hard to envision how the price-reduction policy is implemented on the ground.

For local governments to fully respond to and implement the four national policies, there is still a lot more to be done, starting from data collection and empirical research that will allow the local governments to fully understand the issue and diagnose their jurisdictions. It requires both leadership and inner-and intergovernmental cooperation to gain an accurate and full picture of the problem, and to design and implement new solutions.

Lack of funding

Many local governments that are facing overbuilding and vacancy are also those struggling with a declining economy and shrinking tax base. In addition, local governments are often highly leveraged through local financing platforms, which take loans from the bank and guarantee with land or large infrastructure projects. As the local economy is slowing down, tax revenues in some cities cannot even cover their interest payments. Lack of sufficient and sustainable funding further restricts local government’s ability to take actions against the problem properties.

## Land Banking as a Metropolitan Strategy in Chinese Cities

Land banks are public entities with the function to acquire vacant, abandoned, and delinquent properties and transform them into productive use.[55] After the Great Recession, many cities and towns in the U.S. were facing a growing number of problem properties under the backdrop of local economic decline and decreasing population. Many properties are left in decay, as its owners are either unwilling or unable to maintain or improve them. Authorized under the state legislation, a land bank is created to give governments effective means to reach problem properties that are often stuck in complex foreclosure laws, or have title defects that ordinary investors cannot enforce on the property.

Through property tax foreclosure and code enforcement, land banking makes it possible for the local government to take control of the problem property. After the problem properties become inventories of the land bank, the local government can then convert the properties into productive use, either through public funding or by transferring the properties to responsible private owners. For buildings that have become a public nuisance with no prospect of reuse or sale, land banks can demolish those properties and release the land to start anew.

Although in reality, land bank forms and practices vary in different cities and are subject to different state laws and local ordinances, what is common among the successful practices in Flint, Detroit, Cleveland, and Atlanta is that land banking has become an effective tool in acquiring and managing problematic properties and reducing vacancy, waste and urban blight.

In Flint, Michigan, known as the “vehicle city” and the headquarters of General Motors, land banking helped the government to acquire thousands of foreclosed and tax-delinquent properties and transfer them to new responsible owners. In Detroit, land banking created efficient platforms of property transfers and helped low-income families to acquire ownership of the properties that were abandoned by speculators. In Cleveland, Ohio, land banking has formed cooperative relationships with Fannie Mae and HUD to purchase delinquent properties and demolished several hundred of properties that were abandoned and left in decay. In Atlanta, Georgia, land banking helped fight against blight in the city and transformed problem properties into affordable housing projects.

The successful experience of land banks is relatable to Chinese cities that are either currently facing or anticipating similar problems. The strategies that have worked well in Flint may be applicable to Harbin and Wenzhou, while Atlanta’s experience may offer valuable insights to Nanjing as well as a great number of cities facing both the problem of vacancy and the need to provide affordable housing.

To make land banking work in the Chinese context, there are a number of questions that must be addressed in the law. First, the law needs to grant status and power to the government to enforce its debts against a property. In the U.S., local governments enforce delinquent property taxes and buildings and housing code penalties. In China, without property taxes imposed on the individuals, there are other property-related taxes and claims that can be made as liens secured by the property if the owner does not pay. The governmental agency’s participation in the enforcement process is the local government’s first step to obtain control of problem properties, and a legal prerequisite of a land bank’s rights and power. Second,

[55] Alexander, *supra* note 16.

although land banks are created at the local level, as a public agency, land banks must be authorized in a statute by formal regulation and by the proper legislative organ that specifies the land bank's creation, function, organization, its scope and restrictions of its power. This ensures that a land bank can rely on the law and act accordingly once it is created. It will also ensure stability and transparency and prevent abuse of powers as it is under the public's supervision—especially by local residents and neighborhoods that are affected by the land bank's actions.

As a local policy, national legislation cannot address every problem that is unique to the community that a land bank is serving. Each city is different in its economic and social conditions, fiscal strength, and local rules and regulations, all of which must be carefully examined before designing the policy. Local administrators must be given the flexibility to find creative solutions that tailor to the community's need.

Cooperation with smaller public agencies at lower levels is also important to reach consensus and to respond to the changing externalities and conflicts as early as possible. After all, acquisition of properties, even though they are vacant and abandoned, often involves various parties with different interests and priorities. As a land bank is the entity that carries the task, communication and teamwork with different levels of government agencies, social groups, and individual residents are paramount to achieve its goals and make a long-term impact on the community.

## Conclusion

The current mortgage enforcement system in China has many loopholes and is inefficient. The absence of the local government's effective legal power and standing has caused confusion and inefficiency, as well as abuse of administrative power, when the local government's legitimate public interest is in peril. Creating the legal means for the local government to participate in mortgage enforcement thus is essential to the public control of problem properties.

There is a gap between the judicial process of mortgage enforcement and the local government's public actions in facilitating the housing market recovery and in managing problem properties. The law is unclear and the government lacks the right agency and right tools to participate. Vacant and abandoned properties are imposing costs on local government. As many cities are struggling with vacant and abandoned properties but do not have adequate solutions, their local governments must address the problem rather than delay and neglect it.

Land banks can fill the gaps and connect the enforcement process to the local government's measures of land management and control. Adopting land banking as a metropolitan policy will allow the government to take initiatives in cities that are most in need, such as ghost towns in Ordos and Harbin, where the properties are rejected by the market and sitting in deterioration.

The three policy recommendations to address weaknesses in the mortgage enforcement system and provide solutions to vacant properties are summarized as follows:

First, improve the efficiency in the mortgage enforcement process. This includes amendments in the laws that streamline and speed up the process of mortgage enforcement and property transfer. Saving time is ultimately saving money. The quicker the enforcement process is, the sooner those properties can go back to the market rather than decaying in limbo in the hands of creditors or sitting on the court dockets. Resolving the ambiguity of the junior mortgage and mortgagee should be the centerpiece of the reform. The laws should also recognize and encompass unconventional forms of informal loans that are secured or guaranteed by mortgages or other real estate interests within the regulatory regime. The reluctance to formalize these interests has only resulted in a lack of consistency in judicial decisions, which further complicated the enforcement process and led to higher costs and inefficiencies.

Second, allow government penalties to become liens that attach to the property if the owners/violators fail to pay. This will incentivize the local government to participate and cooperate with enforcement and property transfer of the property in violation. It gives local government the standing to directly act on properties and prevent local agencies from clogging the equity by holding out registration. It will also lay the foundation for government's collection and enforcement of property tax in the future.

Third, introduce land banking as a metropolitan policy in the cities that are struggling with vacant and abandoned properties and urban blight. Land banks allow government to take legal ownership and control of property, empowering the local government to lead and act in depressed housing markets, reducing the negative impact of abandonment and blight and restoring the vitality of the land and the community.

## References


Alexander, Frank S. 2015. *Land Banks and Land Banking. 2 ed.* Flint, MI: Center for Community Progress.

————. 2005. "Land Bank Strategies for Renewing Urban Land." *Journal of Affordable Housing and Community Development Law* 14: 140–169.

Alexander, Frank S. and Leslie A. Powell. 2011. "Neighborhood Stabilization Strategies for Vacant and Abandoned Properties." *Zoning and Planning Law Report* 34(8): 1–12.

Cao, G., F. F. Yuan, and Ran Tao. 2007. "Land Finance, Industrial Structure Evolution and Tax Revenue Growth in China—An analytical perspective." *Chinese Industrial Economy* 12: 13–21.

Chivakul, Mali, W. Raphael Lam, Xiaguang Liu, Wojciech Maliszewski, and Alfred Schipke. 2015. "Understanding Residential Real Estate in China." Working Paper 15/84. International Monetary Fund.

Clarke, Donald C. 2014. "China's Stealth Urban Land Revolution." *American Journal of Comparative Law* 62 (2): 323–336.

————. 2003. "Puzzling Observations in Chinese Law: When is a Riddle Just a Mistake?" in *Understanding China's Legal System*, ed. C. Stephen Hsu, 93–121. New York, NY: New York University Press.

Eliot, Douglas, Arthur Kroeber, and Qiao Yu. 2015. "Shadow Banking in China: A Primer." Washington, D.C.: The Brookings Institution.

Fang, Hanming, Gu Quanlin, Wei Xiong, and Li-An Zhou. 2015. "Demystifying the Chinese Housing Boom." Working Paper 21112. National Bureau of Economic Research.

Feng, L. and H. Li. 2012. "Spatial Pattern Analysis of Urban Sprawl: Case Study of Jiangning, Nanjing, China." *Journal of Urban Planning and Development* 9: 263-269.

Huang, Ding-xi. 2012. "Land Banking Mechanism and Its Effects on City Development in China." Post-Doctorate Thesis. Pokfulam, Hong Kong: The University of Hong Kong.

Lu, Xin-hai, Deng, Zhong-ming. 2004. "An Assessment of Municipal Land Reserve System." Journal of City Planning.

Man, Joyce Yanyun and Yang He. 2012. "The Debt Magnitude and Insolvency Risk of Local Financing Platforms in China." Working Paper. Cambridge, MA: Lincoln Institute of Land Policy.

Moody's Investors Service. 2015. "Shadow banking slowdown reduces financial risks, but changing composition of credit flows poses new challenges." *Moody's*. April 29. *https://www.moodys.com/research/Moodys-Shadow-banking-slowdown-reduces-financial-risks-but-changing-composition--PR_323993*

Randolph, Patrick A. Jr. and Jianbo Lou. 2002. *Chinese Real Estate Law*. The Hague, The Netherlands: Kluwer Law International.

Ren, Rongrong. 2013. "Housing Affordability in China's Cities: An Assessment." Working Paper. Beijing: Peking University-Lincoln Institute of Land Policy, Center for Urban Development and Land Policy.

Stein, Gregory M. 2012. *Modern Chinese Real Estate Law: Property Development in an Evolving Legal System*. Burlington, VT: Ashgate Publishing Company.

Su, Fubing, Ran Tao, and Dali L. Yang. 2013. "Rethinking the Institutional Foundations of China's Hyper Growth: Official Incentives, Institutional Constraints, and Local Developmentalism." Draft Chapter in *The Oxford Handbook on Politics of Development*, eds. Carol Lancaster and Nicholas van de Walle. New York, NY: Oxford University Press.

Tao, Ran. 2012. "The Issue of Land in China's Transition and Urbanization." Working Paper. Cambridge, MA: Lincoln Institute of Land Policy.

Wallace, Walker, Bingna Guo, and Sylvia Shi. 2014. "Enforcement on Defaulted Loans and Mortgage on Real Property under Chinese Law." Shanghai: O'Melveny & Myers LLP.

Whitman, Dale. A. 2001. "Chinese Mortgage Law: An American Perspective." *Columbia Journal of Asian Law* 15: 35–79.

World Bank. 2014. "China's Urbanization and Land: A Framework for Reform." In *Urban China: Toward Efficient, Inclusive, and Sustainable Urbanization*. 263–339.Washington D.C.: The World Bank and Development Research Center of the State Council, The People's Republic of China.

Wong, C. 2013. "Paying for Urbanization in China: Challenges of Municipal Finance in the Twenty-First Century." In *Financing Metropolitan Governments in Developing Countries*, eds. W. Roy Bahl, Johannes F. Linn, and Deborah L. Wetzel. Cambridge, MA: Lincoln Institute of Land Policy.

Zhang, Yubin, Fengjuan Kong, and Fengtao Han. 2013. "Macro-Economic Policy of Housing Market in Harbin, Part II." A Study of Harbin's Housing Market, Working Paper. Harbin Research Institute of Economics.

Zhao, Cheng-sheng, , Xian-jin Huang, and Zhi-gang Chen. 2011. "Relevant Theoretical Research on Municipal Land Reservation Planning." *Modern Urban Research* 4-11.

Zheng, Siqi, Joyce Yanyun Man, and Rongrong Ren. 2013. "The State of Housing Markets in China: Trends, Patterns, and Affordability." Working Paper. Beijing: Peking University-Lincoln Institute, Center for Urban Development and Land Policy.