

The Notice to a Lessee of a Building Site or a Farm Land Regarding a Right of First Refusal: the Conflict between the Civil Code and Land Laws

Chien-Chang Huang*

Abstract

There is no provision concerning “the way to notice the person who has a right of first refusal when the lessor of a building site or a farm land sells the land” in the Land Act enacted formerly, but there are provisions in the Civil Code added later and provide that the seller shall notify the person “in writing”. What is the validity if the lessor of the land notifies the person who has the right of first refusal in the way other than writing? It has been an important dispute in practice and of great value to anatomize.

This study selects a leading case in practice and elaborates “the efficiency and costs of statutory rights of first refusal” as the foundation of discussion, lists “the provisions regarding the ways to notify the person who has the right of first refusal”, researches “the legislative purpose of the provisions about notice in writing and what the validity is if someone violates the provision”, discusses “the content of notice”, explores “whether the person who has the right of first refusal can exercise the right if the seller violates the provision”, and analyzes “the obliger of notice”, “the principle of good faith”, and “the applicative relation between the Civil Code and the Land Act”.

The written notice has the functions such as protecting the person who has the right of first refusal and preserving the evidence. The person who has the right of first refusal may claim for “written” notice according to said

* Associate Professor, Department of Real Estate and Built Environment, College of Public Affairs, National Taipei University; Director, Taiwan Property and Economic Law Institute.

E-mail : clement@yahoo.com.tw.

stipulations of the Civil Code. However, the person who has the right of first refusal is deemed to give up his right, if the seller notices the important terms of the sale to the person who has the right of first refusal without writing, and the person who has the right of first refusal does not claim for “written” notice, nor exercise the right of first refusal within the statutory period.

Keywords: right of first refusal, right of preemption, lessee, notice, in writing, special law, the principle of good faith