

**High-rise for the Dead:
The Problematic Contractual and Property Arrangements
Regarding Columbarium Pagoda**

Yun-chien Chang & Chung-Jau Wu *

Abstract

Trades of columbarium pagoda niches are multi-million-dollar businesses, but it is unclear what kind of (permanent) use right consumers actually purchase. Combining economic analysis with doctrinal one, this article deals with legal issues arising under current laws and provides reform proposals. Consumers and columbarium pagoda firms enter into quasi-lease, not sale contracts. Article 425 Section 1 of the Civil Code should apply *mutatis mutandis*, and possession by consumers is not required, because there are other proper ways to give notice of niche transactions. The niche transaction contracts used in the market now, no matter whether sales of shares of ground land and pagodas are included, do not stop consumers from applying for real estate partition, creating risks that pagodas are torn down. In addition, covenants regarding the use of pagodas are not registered, so they do not run with shares. Nonetheless, even if columbarium pagoda firms and consumers specify the best terms allowed under current laws, there is still a huge gap between consumer needs and legal restrictions: the cap for lease terms is 20 years and the cap for no-partition covenants is 30 years, but the quasi-lease specifies a 50-year usage.

This article contends that the condominium form should be used to structure the property rights of columbarium pagodas. Consumers who plan to use niches

* Yun-chien Chang: Research Professor & Director of Center for Empirical Legal Studies, Institutum Iurisprudentiae, Academia Sinica. J.S.D., N.Y.U. Law.

E-mail: kleiber@sinica.edu.tw

Chung-Jau Wu: Professor, National Taiwan University College of Law.

E-mail: wucjj2@ntu.edu.tw

themselves now can only rely on cooperation of faithful heir, as the current law does not provide any legal tool for consumers to make sure that their wishes be fulfilled. After exploring reform proposals involving trust law, contract law, and estate law, this article argues the use of wills or post-death agency contracts to stipulate how to deal with corpses (a separate patrimony that has representatives but no owners). This way, no new law needs to be enacted, but legal interpretations of current laws and transactional practices have to be altered.

Keywords: co-ownership partition, trust, wills, corpse, sale does not break lease, condominium, permanent use right