



A COMPARATIVE ANALYSIS OF PROPERTY MORTGAGE LAWS IN CHINA AND VIETNAM

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Abstract - Mortgage regulations play a vital role in facilitating real estate transactions and ensuring the security of loans. The research examines various aspects of mortgage regulations, including origination, registration, rights and duties of parties, foreclosure processes, and consumer protection legislation. Comparing China and Vietnam's property mortgage regulations provides insights into their mortgage systems' procedures, safeguards, and efficiency. It reveals the strengths and weaknesses of their legal frameworks, which are crucial for policymakers, legal practitioners, scholars, and stakeholders in both nations. The research also evaluates the effectiveness of consumer protection measures in safeguarding borrowers from unfair conditions, predatory lending, and exploitative practices. The methodology involves an extensive literature review of existing research, government records, and academic publications on property mortgage laws in China and Vietnam. Primary and secondary sources are collected, including legal documents, legislation, scholarly articles, and industry reports. The collected data is then analyzed and compared to identify critical aspects of mortgage regulations in both countries. The findings of this research highlight vital differences in mortgage registration procedures, loan-to-value ratios, interest rate regulations, foreclosure processes, borrower protection mechanisms, and government initiatives. The discussion section explores the creation and registration of mortgages, parties' rights and responsibilities, foreclosure procedures, and measures to protect consumers in both countries. The research concludes with recommendations to improve mortgage systems in China and Vietnam, including streamlining processes, enhancing transparency, strengthening consumer protection measures, and exploring alternative dispute-resolution methods.

Keywords: Property mortgage laws, Legal framework, financial stability, Macroprudential measures, Consumer protection

INTRODUCTION

Mortgage regulations help real estate transactions and secure loans. Policymakers and mortgage and property owners must understand and analyze these rules. This research compares Chinese and Vietnamese residential mortgage rules. This comparative research attempts to provide light on property mortgage systems in these two dynamic Asian countries by comparing their legal systems' similarities, differences, strengths, and weaknesses. China and Vietnam, with strong economic expansion and urbanization, are global real estate players (Zheng & Zhang, 2021). To meet rising housing and mortgage finance needs, their property mortgage regulations have changed. Comparing their legal frameworks will illuminate home mortgage regulations, procedures, and safeguards. This research examines mortgage origination, registration, rights and duties of parties, foreclosure processes, and consumer protection legislation.

Property mortgage regulations cover mortgage origination, including the stages and conditions. Lenders must create mortgages to protect their interests in the case of borrower failure and ensure legal compliance. Understanding how China and Vietnam create mortgages will reveal their efficiency, efficacy, and convenience. Property mortgage regulations require mortgage registration to prove mortgage legality and priority against other parties. Potential purchasers, lenders, and others may see relevant information throughout the registration process. We may assess mortgage registration openness, trustworthiness, and efficiency by comparing China and Vietnam. Residential mortgage rules focus on parties' rights and responsibilities. Borrowers and lenders have legal rights and responsibilities in each nation. These rights and duties reveal the power balance, contractual



freedoms, and consumer protections in place to protect all parties. Foreclosures resolve unpaid mortgages and safeguard lenders. Comparing foreclosure processes in China and Vietnam will reveal their efficiency, fairness, and legal protections for defaulted mortgages.

Consumer protection ensures fair financing, transparency, and borrowers' rights. This research will evaluate how well China and Vietnam's property mortgage regulations protect borrowers from unfair conditions, predatory lending, and exploitative practices (Duong & Truong, 2019). This comparative study of property mortgage laws in China and Vietnam will help us comprehend their home mortgage regulations. The study will identify their systems' strengths and flaws and suggest improvements. The results will benefit policymakers, legal practitioners, stakeholders, scholars, and property law and mortgage finance enthusiasts in both nations.

METHODOLOGY

This study aims to conduct a comparative analysis of property mortgage laws in China and Vietnam. The research aims to examine the legal frameworks governing residential mortgage practices in both countries and identify areas of similarity, differences, strengths, and weaknesses. The study also intends to suggest improvements to the mortgage systems in China and Vietnam and provide insights for policymakers, legal practitioners, stakeholders, and scholars. The research methodology includes an extensive literature review of property mortgage laws in China and Vietnam. Identify relevant scholarly articles, government records, industry research, and academic publications that discuss the legal frameworks, mortgage registration, foreclosure procedures, borrower protections, and government initiatives related to residential mortgages in both countries. The literature review will provide a comprehensive understanding of mortgage laws in China and Vietnam. Collect relevant data and information from primary and secondary sources. Primary sources may include legal documents, legislation, government reports, and official records of property mortgage laws in China and Vietnam. Secondary sources may include scholarly articles, books, research papers, and industry reports. Data collection may also involve interviews or surveys with experts in the field to gather additional insights. Analyze the collected data and information to compare the property mortgage laws in China and Vietnam. Identify and categorize critical aspects of analysis, such as mortgage registration procedures, loan-to-value ratios, interest rate regulations, foreclosure procedures, borrower protection mechanisms, and government initiatives. Create a comparative framework or table to present the findings in a structured manner.

LITERATURE REVIEW

According to (Koss & Shi, 2018), China has mortgage laws because land ownership and property rights have been recognized in the country since ancient times. In contrast, the beginnings of a specialized mortgage law framework emerged in the twentieth century. During China's Republican era (1912-1949), the country's political and judicial systems underwent significant reforms (Koss & Shi, 2018). Hoang, Tran & Nguyen, (2022) shows that buying and selling mortgaged property is governed under the mortgage laws of the 1929 Civil Code. However, the framework for real estate mortgages was immature and lacked adequate safeguards. According to a study conducted by Huang, (2018), after 1949, when the People's Republic of China was established, land and property were nationalized, and the country underwent significant changes. The government took control of much of the land and severely limited individual property rights. During this time, mortgage law received less attention than it does now. No serious consideration was paid to mortgage rules until the economy was liberalized in the late 1970s (Huang, 2018). With the emergence of private property ownership and the liberalization of the economy came the need for a sound legal framework for property mortgages. Li & Gao, (2019) study shows that in 2007, the Property Law of the People's Republic of China provided a comprehensive legal framework for property rights in China, including mortgages. The law that clarified the roles of mortgagors and mortgagees strengthened property rights.

According to Linh et al., (2019), mortgage law in Vietnam has also gone through many iterations due to historical and political influences. During the colonial era, when France dominated Vietnam,



the nation inherited French civil law doctrines, including those regarding property rights and mortgages. However, mortgage law, as we know it now did not develop until much later. Nguyen, Uong & Nguyen, (2020) shows that after the Vietnam War ended in 1975 and the country was reunited, most private property in Vietnam was transferred to governmental control. Mortgage regulations were not a high priority, and individual ownership was severely limited. According to a study by Nguyen, (2022), Vietnam initiated economic changes in the late 1980s called iMi in an attempt to liberalize the economy and foster private ownership. As the economy was liberalized to reflect market-based ideas, mortgage laws started to change to reflect those changes. The Civil Code of Vietnam, which took effect in 1990, regulates matters of property ownership and transactions, such as mortgages (Wit, 2021). However, mortgages on real estate remained subject to a limited corpus of legislation.

The Land Law has been revised extensively since its first publication in 1993. The Land Law codified property rights, including mortgages, and expanded upon the permissible applications of land. The most recent complete modification to Vietnam's Civil Code, which took effect in 2015, further strengthens the legal protections afforded to mortgages on real property. In this updated version of the law, the rights and duties of mortgagors and mortgagees, as well as the registration processes involved, are more clearly spelled out. Efforts have been made to fortify property rights and construct comprehensive regulatory structures that promote mortgage lending in both Chinese and Vietnamese housing legislation over the past few years.

FINDINGS

Aspect Analysis

Aspect of Analysis	China	Vietnam
Mortgage Registration Procedures	- Centralized mortgage registration system	- Fragmented registration procedures vary by locality
	- Registration through local land bureaus	- Lack of clarity and transparency in registration processes
	- Emphasis on accurate documentation	- Ongoing efforts to improve registration efficiency
Loan-to-Value Ratios	- Regulated by government authorities	- LTV ratios vary by lender and borrower
	- Different LTV ratios based on property type and location	- Limited regulation and monitoring of LTV ratios
Interest Rate Regulations	- Government-set interest rate caps	- Interest rates set by lenders
	- Gradual interest rate liberalization	- Interest rate volatility



Aspect of Analysis	China	Vietnam
	- Differential interest rates for first-time homebuyers	
Foreclosure Procedures	- Well-defined foreclosure process	- Complex foreclosure process
	- Clear steps and timeline for foreclosure	- Lack of clarity and enforcement in foreclosure procedures
	- Legal protection for both parties involved	
Borrower Protection Mechanisms	- Strong consumer protection measures	- Efforts to enhance borrower rights and protection
	- Strict regulations on mortgage terms	- Limited legal recourse for borrowers
	- Cooling-off period for borrowers to reconsider mortgage agreements	
Government Initiatives	- Policies to promote affordable housing	- Efforts to develop credit information infrastructure and financial literacy
	- Support for first-time homebuyers	- Emphasis on housing finance reform and affordability
	- Mortgage-backed securities development	- Government initiatives to improve access to housing finance

DISCUSSION

Creation of Mortgage

A mortgage in China must be registered at the appropriate land registration. Registration is essential to establish the validity and priority of the mortgage against other parties. It makes it simpler for potential buyers and lenders to investigate the property (Zheng & Zhang, 2021). China has a reliable registration system because local land registration agencies maintain a central database of recorded mortgages. Using this approach, anybody with a stake in the property may



quickly and simply ascertain whether or not any mortgages exist and, if so, in what state they are. Because of this centralized method, the mortgage industry is more reliable and productive. In Vietnam, mortgages are established at the land office, also called the land registration office. Although the result of the registration process is the same everywhere, different regions' procedures may be more or less efficient depending on local norms (Nguyen & Ha, 2018). There is room for error and delays because registration is done separately on several servers. To ensure the timely and accurate registration of mortgages, the Vietnamese government should fund the hiring of qualified personnel and the purchase of necessary equipment for land offices (Nguyen & Tran, 2020). The mortgage origination procedures in both countries might benefit from simplification, reduced administrative expenses, and the promotion of digitalization of records and transactions. Nguyen and Hsu (2018) say that improving efficiency in the mortgage production process might stimulate development in the real estate industry.

Registration of Mortgage

In both China and Vietnam, mortgages are not legally binding until they have been registered. The mortgage contract, identification papers, and property ownership certificates are normally required for registration in both countries. The mortgage registration procedure in China is often regarded as being more streamlined and thorough. The local land registration authority keeps a public database of recorded mortgages (Yang, Luo & Yan, 2018). This consolidated database makes information about mortgages on a property easily accessible to anybody interested. Information availability aids risk management and boosts consumer trust in the mortgage sector. The local land office or land registration office is where mortgages are registered in Vietnam (Thanh, 2018). However, the registration system's efficacy may vary across states and territories. The lack of central control over the registration procedure raises the possibility of discrepancies and delays in specific circumstances. Efforts should be undertaken to build a consolidated database available to the public, standardize processes, and increase cooperation among various registration offices to solve this issue.

Parties' Rights and Responsibilities

When it comes to residential mortgages, both China and Vietnam attempt to offer a fair and balanced legal framework by recognizing the rights and duties of all parties concerned. The mortgage agreement between a borrower and a lender in China may change the rights and responsibilities of both parties (Zhu, Chen & Wang, 2020). The parties' ability to negotiate the conditions gives them the freedom to construct a set of rights and duties that best suits their situation. However, borrowers must be protected against predatory lending practices and unfavorable conditions. Protecting borrowers' best interests requires stricter consumer protection measures, such as explicit disclosure requirements and interest rate caps. Borrowers and lenders in Vietnam have the legal right to freely negotiate their respective rights and duties (Lan & Pang 2022). However, we must guard against unscrupulous tactics that put borrowers at a disadvantage. To keep the mortgage market strong and stable, it is essential to find a happy medium between the needs of borrowers and those of lenders. It is important to raise borrowers' financial literacy and knowledge to protect the rights and interests of all parties. A borrower's ability to make educated choices and defend their interests throughout the mortgage process is greatly enhanced by knowledge of their rights and duties.

Procedures for Foreclosure

Whereas Vietnam only has a judicial foreclosure system in existence, China has both a judicial and non-judicial foreclosure procedure. Non-judicial foreclosure techniques, including public auctions or negotiated settlements, may be used to swiftly and efficiently resolve defaulted mortgages in China (Cai, Chapman & Wang, 2019). Non-judicial foreclosure allows for possible faster and less court-involved resolution of issues. To ensure fairness, protect borrowers' rights, and prevent lenders from abusing their influence, however, stringent legal protections are necessary. Transparency and accountability in the foreclosure process are crucial for maintaining public trust and confidence.



In Vietnam, the judicial foreclosure process ensures a higher level of legal protection and safeguards for debtors by using the court system. When a borrower fails to make their mortgage payments and foreclosure proceedings are to commence, the lender must first file a case in court (Hoang, Tran & Nguyen, 2022). The assets of the defaulting party will be sold at public auction to satisfy the debt if the court rules that the default has occurred. While this method provides some additional legal safeguards, it may also cause foreclosure proceedings to take longer, which may be difficult for both borrowers and lenders. Foreclosure procedures might be improved in both China and Vietnam by exploring alternate dispute settlement systems. Mortgage disputes may be resolved more quickly and cheaply via mediation or arbitration instead of going to court. Access to fair and impartial courts, efficient case administration, and strict enforcement of court orders are also necessary for a successful foreclosure system.

Measures to Protect Consumers

The rights and interests of borrowers in home mortgage transactions in both China and Vietnam are protected by several consumer protection legislation. Mortgage financing in China is governed by consumer protection legislation. These statutes cover all disclosure obligations, interest rate caps, unfair practice penalties, and alternative dispute resolution processes (LE THI NGOC, 2022). The goal is to prevent unfair lending practices and safeguard consumers by requiring full disclosure of all fees and rates. Vietnam has enacted similar laws to shield borrowers from predatory lending practices. There will be more openness, disclosure, and justice in the loan process because of these rules. They make sure that borrowers are not subjected to predatory lending practices and provide them with remedies in the event of a breach (NGUYEN & NGUYEN, 2020). Borrowers' faith and confidence in the mortgage market may benefit from ongoing efforts to tighten consumer protection measures. Borrowers should be made aware of their rights and responsibilities, easily available dispute resolution channels, and consumer protection legislation should be regularly monitored and enforced.

CONCLUSION AND RECOMMENDATIONS

Several important facts and consequences are highlighted by the comparison of China's and Vietnam's home mortgage legislation. This comparison highlights the similarities and variations between the legislative provisions in these two countries that regulate home mortgages. China has made major changes in recent years to improve the security of the mortgage sector and safeguards for borrowers (Hoang, Tran & Nguyen, 2022). The government has instituted interest rate ceilings, capped mortgage interest rates, and consolidated the registration of mortgages. The robustness of China's mortgage system may be attributed in part to the country's stringent consumer protection policies, clearly established foreclosure processes, and government attempts to encourage affordable housing. However, with rising urbanization and ambitions of homeownership, the residential mortgage industry in Vietnam has expanded rapidly. However, problems with legal clarity, openness, and enforcement continue to be an issue (Dang, 2019). Disparities emerge between lenders and borrowers due to mortgage registration processes that are difficult to follow and loan-to-value ratios that range widely. The loosening of restrictions on interest rates has led to increased instability. Borrower protection tools also need to be strengthened since the foreclosure process is complicated.

The research shows that China and Vietnam have much to learn from one another. Vietnam may be able to learn a thing or two about registration processes from China's unified system and focus on proper paperwork. China may learn from Vietnam's efforts to improve borrower rights and protection, as well as its measures to expand credit information infrastructure and encourage financial literacy (Hoang, Tran & Nguyen, 2022). The results also highlight the need for ongoing monitoring and adjustment to accommodate the mortgage market's dynamic changes. Clarity and openness in mortgage registration processes, enforcement of foreclosure proceedings, and improved borrower protection measures are all areas that both jurisdictions should concentrate on. Mortgage markets in China and Vietnam may benefit from initiatives to expand access to homeownership, assist first-time buyers, and create mortgage-backed securities.



Policymakers, legal experts, scholars, and stakeholders in both China and Vietnam may benefit from the insights gained from this comparative study. Policymakers can better support a mortgage system that encourages homeownership, financial stability, and borrower safety if they are aware of the systems' strengths and flaws (Nguyen & Nguyen, 2020). The data may also be used as a benchmark against which other nations might measure the success of their home mortgage schemes. This study's findings are based on the current legal frameworks and regulations as they stand as of September 2021. Research is needed to keep up with any changes or updates to the residential mortgage laws of China and Vietnam due to the ever-changing nature of mortgage markets, ongoing reforms, and prospective legislative changes. In sum, this research adds to the body of literature on mortgage legislation and sheds light on the differences between China's and Vietnam's residential mortgage markets. By highlighting problem areas, policymakers and stakeholders may strengthen mortgage frameworks to better safeguard borrowers' rights and foster long-term property in both countries.

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