

Economic Analysis and Assessment for the fixed term tenant protection

-On the consistency with foreclosure-

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[Synopsis]

Fixed term tenant protection (henceforth FTTP) right for the rental land or rental housing is the eminent protection form because it can protect the tenant investment revenue without any violation of owner's property right. However, recently the arguments for the tenant protection focus to the short-term tenancy (henceforth STP) right (Tanki Chinsyaku-ken in Japanese) because the right can be used to violate the mortgager's right.

In this report, we theoretically consider the consistency of the FTTP and the foreclosure of the mortgage under no STP. If the FTTP can protect the tenant even when the mortgage has priority for the FTTP contract, the both right can be consistent. In such case we can justify the abolishment of STP right. Otherwise, we shall consider a legal policy when the STP is abolished.

The results of this report are as follows. As for rental land, the optimal term for the tenant protection must be augmented by the probability of the foreclosure. FTTP right is consistent with the foreclosure only if this probability is less than the probability of the conversion of the land use and the value of the land is larger than the debt of the owner. Otherwise they are not consistent. Nevertheless, any of FTTP contract is dominated by the purchase contract of the land, so that the FTTP contract is replaced by the purchase contract. Thus we can conclude that it is justified to abolish the STP without any additional legal policies.

As for rental housing, the optimal term for the tenant protection also must be augmented by the probability of the foreclosure. FTTP right is consistent with the foreclosure and the house owner's investment is also efficient only if this probability is less than the probability of the conversion of the land use. Otherwise, there could be a room where the mortgager has incentive to forgive the priority to the FTTP contract by itself, so that the efficiency is always achievable in the competitive market if such a contract is legally admitted.