

中华人民共和国城镇国有土地使用权出让和转让暂行条例（2020修订）

发 文 机 关 ： 国务院

Promulgated by:

State Council

发 布 日 期 ： 2020. 11. 29

Promulgation Date:

2020.11.29

生 效 日 期 ： 2020. 11. 29

Effective Date:

2020.11.29

时 效 性 ： 现行有效

Validity Status:

valid

中华人民共和国城镇国有土地使用权
出让和转让暂行条例（2020修订
）

（1990年5月19日中华人民共和国
国务院令第55号发布根据2020年
11月29日《国务院关于修改和废止
部分行政法规的决定》修订）

Provisional Regulations of the People's Republic of China for the Grant and Assignment of the Right to Use State Land in Urban Areas (Revised in 2020)

(Promulgated under Decree No. 55 of the State Council on May
19, 1990 and revised in accordance with the Decision of the State
Council on Revising and Repealing Some Administrative
Regulations on November 29, 2020)

第一章 总则

CHAPTER I — GENERAL PROVISIONS

第一条 为了改革城镇国有土地
使用制度，合理开发、利用、经
营土地，加强土地管理，促进城市
建设和经济发展，制定本条例。

Article 1. These Regulations are enacted in order to reform the
system of the use of State land in urban areas, to rationalize
development and utilization of and business relating to land,
to strengthen land management and to promote urban
construction and economic development.

第二条 国家按照所有权与使
用权分离的原则，实行城镇国有土
地使用权出让、转让制度，但地下
资源、埋藏物和市政公用设施除外

Article 2. Except for underground resources, buried things
and public utilities, the State implements a system of the
grant and assignment of the right to use State land in urban
areas under the principle of separating the ownership of land
from the right to use land. The term "State land in urban areas"
referred to in the preceding paragraph means land owned by the
whole people within the area of municipalities, county towns,

officially established towns and industrial and mining areas (hereinafter referred to as "land").

前款所称城镇国有土地是指市、县城、建制镇、工矿区范围内属于全民所有的土地(以下简称土地)

第三条 中华人民共和国境内外的公司、企业、其他组织和个人，除法律另有规定者外，均可依照本条例的规定取得土地使用权，进行土地开发、利用、经营。

Article 3. Except as otherwise provided by law, any company enterprise, other organisation or individual in or outside the People's Republic of China may acquire the right to use land and develop, utilize and engage in business relating to land in accordance with these Regulations.

第四条 依照本条例的规定取得土地使用权的土地使用者，其使用权在使用年限内可以转让、出租、抵押或者用于其他经济活动，合法权益受国家法律保护。

Article 4. A land user who has acquired the right to use land in accordance with these Regulations may assign, lease and mortgage such right or utilize such right in other economic activities within the time limit for such use. Such user's lawful rights and interests shall be protected by State law.

第五条 土地使用者开发、利用、经营土地的活动，应当遵守国家法律、法规的规定，并不得损害社会公共利益。

Article 5. In developing, utilizing and engaging in business relating to land, land users shall comply with the provisions of State laws and regulations and may not injure the public interest.

第六条 县级以上人民政府土地管理部门依法对土地使用权的出让、转让、出租、抵押、终止进行

Article 6. The land administration departments of the People's Governments at and above county level shall supervise and examine in accordance with the law the grant, assignment, lease, mortgage and termination of the right to use land.

监督检查。

第七条 土地使用权出让、转让、出租、抵押、终止及有关的地上建筑物、其他附着物的登记，由政府土地管理部门、房产管理部门依照法律和国务院的有关规定办理。

登记文件可以公开查阅。

Article 7. The registration of the grant, assignment, lease, mortgage and termination of the right to use land and the structures on and other attachments to the land shall be handled by the government departments for land administration and real estate administration in accordance with the law and the relevant regulations of the State Council. Registration documents shall be public.

第二章 土地使用权出让

CHAPTER II — GRANT OF THE RIGHT TO USE LAND

第八条 土地使用权出让是指国家以土地所有者的身份将土地使用权在一定年限内让与土地使用者，并由土地使用者向国家支付土地使用权出让金的行为。

土地使用权出让应当签订出让合同。

Article 8. The term "grant of the right to use land" refers to the act by which the State, in its capacity as land owner, grants the right to use land for a certain number of years to a land user and the land user pays to the State a fee for the grant of the right to use land. When the right to use land is granted, a grant contract shall be entered into.

第九条 土地使用权的出让，由市、县人民政府负责，有计划、有步骤地进行。

Article 9. Municipal and county People's Governments shall be responsible for the grant of the right to use land in a planned and systematic manner.

第十条 土地使用权出让的地块、用途、年限和其他条件，由市

Article 10. With respect to the specific tracts of land, their purpose, the time limits and other conditions concerning the grant of the right to use land, the land administration departments of municipal and county People's Governments

、县人民政府土地管理部门会同城市规划和管理建设部门、房产管理部门共同拟定方案，按照国务院规定的批准权限报经批准后，由土地管理部门实施。

shall prepare draft plans jointly with urban planning and construction administration departments and real estate administration departments, and implement such plans after submission to and approval by the competent approval authorities as designated by the State Council.

第十一条 土地使用权出让合同应当按照平等、自愿、有偿的原则，由市、县人民政府土地管理部门(以下简称出让方)与土地使用者签订。

Article 11. Contracts for the grant of the right to use land shall be entered into by the land administration department of the municipal or county People's Government (hereinafter referred to as the "grantor") and the land user in accordance with the principles of equality, voluntary participation and consideration.

第十二条 土地使用权出让最高年限按下列用途确定：

Article 12. The maximum terms of grants of the right to use land shall be determined in light of the land's purpose, as follows; (1) 70 years in the case of land for residential purposes;

(一)居住用地七十年；

(2) 50 years in the case of land for industrial purposes;

(二)工业用地五十年；

(3) 50 years in the case of land for educational, scientific, technological, cultural, public health or sports purposes;

(三)教育、科技、文化、卫生、体育用地五十年；

(4) 40 years in the case of land for commercial, tourism or recreational purposes;

(四)商业、旅游、娱乐用地四十年；

(5) 50 years in the case of land for comprehensive use or other purposes.

(五)综合或者其他用地五十年。

第十三条 土地使用权出让可

Article 13. The right to use land may be granted in the

以采取下列方式：

（一）协议；

（二）招标；

（三）拍卖。

依照前款规定方式出让土地使用权的具体程序和步骤，由省、自治区、直辖市人民政府规定。

following three manners: (1) by agreement;

(2) by invitation of bids;

(3) by auction.

The specific procedures and measures for granting the right to use land in the manners as provided in the preceding paragraph shall be stipulated by the People's Governments of the provinces, autonomous regions and municipalities directly under the Central Government.

第十四条 土地使用者应当在

签订土地使用权出让合同后六十日内，支付全部土地使用权出让金。逾期未全部支付的，出让方有权解除合同，并可请求违约赔偿。

Article 14. Land users shall pay in full the fee for the grant of the right to use land within 60 days after execution of the contract for the grant of such rights. If a land user fails to make full payment within such time limit, the grantor shall have the right to rescind the contract and may claim liquidated damages.

第十五条 出让方应当按照合

同规定，提供出让的土地使用权。未按合同规定提供土地使用权的，土地使用者有权解除合同，并可请求违约赔偿。

Article 15. The grantor shall provide the right to use the granted land in accordance with the contract. If it fails to provide such right in accordance with the contract, the land user shall have the right to rescind the contract and may claim liquidated damages.

第十六条 土地使用者在支付

全部土地使用权出让金后，应当依照规定办理登记，领取土地使用证，取得土地使用权。

Article 16. Upon payment in full of the fee for the grant of the right to use land, a land user shall carry out registration procedures in accordance with regulations, obtain a land use certificate and thus acquire the right to use land.

第十七条 土地使用者应当按照土地使用权出让合同的规定和城市规划的要求，开发、利用、经营土地。

未按合同规定的期限和条件开发、利用土地的，市、县人民政府土地管理部门应当予以纠正，并根据情节可以给予警告、罚款直至无偿收回土地使用权的处罚。

Article 17. Land users shall develop, utilize and engage in business relating to land in accordance with the provisions of the contract for the grant of the right to use land and urban planning requirements. In case of failure to develop or utilize the land in accordance with the schedule and conditions specified in the contract, the land administration department of the municipal or county People's Government shall correct such situation and may impose punishment ranging from issuance of a warning and imposition of a fine to recovery of the land use right without compensation, depending on the seriousness of the case.

第十八条 土地使用者需要改变土地使用权出让合同规定的土地用途的，应当征得出让方同意并经土地管理部门和城市规划部门批准，依照本章的有关规定重新签订土地使用权出让合同，调整土地使用权出让金，并办理登记。

Article 18. If a land user needs to change the purpose of the land as specified in the contract for the grant of the land use right, he shall obtain the consent of the grantor and the approval of the land administration department and urban planning department. Upon approval, a new contract for the grant of the right to use land shall be entered into in accordance with the relevant provisions of this Chapter, the fee for the grant shall be readjusted and registration procedures shall be carried out.

第三章 土地使用权转让

CHAPTER III — ASSIGNMENT OF THE RIGHT TO USE LAND

第十九条 土地使用权转让是指土地使用者将土地使用权再转移的行为，包括出售、交换和赠与。

未按土地使用权出让合同规定的期限和条件投资开发、利用土地

Article 19. The term "assignment of the right to use land" refers to the act by which a land user passes on the right to use land, and includes sale, exchange and gift. The right to use land may not be assigned if no investment, development and utilization with respect to the land has been conducted in accordance with the schedule and conditions specified in the contract for the grant of the land use right.

的，土地使用权不得转让。

第二十条 土地使用权转让应当签订转让合同。

Article 20. When the right to use land is assigned, an assignment contract shall be entered into.

第二十一条 土地使用权转让时，土地使用权出让合同和登记文件中所载明的权利、义务随之转移。

Article 21. When the right to use land is assigned, the rights and obligations specified in the contract for the grant of the land use right and the registration documents shall pass along with such right.

第二十二条 土地使用者通过转让方式取得的土地使用权，其使用年限为土地使用权出让合同规定的使用年限减去原土地使用者已使用年限后的剩余年限。

Article 22. The time limit for use of the right to use land that a land user has acquired by means of assignment shall be the remaining period of the term specified in the contract for the grant of the land use right after deduction of the period for which the original land user(s) has (have) used the land.

第二十三条 土地使用权转让时，其地上建筑物、其他附着物所有权随之转让。

Article 23. Where the right to use land is assigned, the structures on and other attachments to the land are assigned along with such right.

第二十四条 地上建筑物、其他附着物的所有人或者共有人，享有该建筑物、附着物使用范围内的土地使用权。

Article 24. The owner or common owners of a structure on or another attachment to a tract of land shall have the right to use the land underlying such structure or other attachment. When a land user assigns his title to a structure on or another attachment to a tract of land, the right to use the land underlying such structure or other attachment is assigned along with such structure or other attachment except where such structure or other attachment is assigned as movable property.

土地使用者转让地上建筑物、其他附着物所有权时，其使用范围内的土地使用权随之转让，但地上

建筑物、其他附着物作为动产转让的除外。

第二十五条 土地使用权和地上建筑物、其他附着物所有权转让，应当依照规定办理过户登记。

土地使用权和地上建筑物、其他附着物所有权分割转让的，应当经市、县人民政府土地管理部门和房产管理部门批准，并依照规定办理过户登记。

第二十六条 土地使用权转让价格明显低于市场价格的，市、县人民政府有优先购买权。

土地使用权转让的市场价格不合理上涨时，市、县人民政府可以采取必要的措施。

第二十七条 土地使用权转让后，需要改变土地使用权出让合同规定的土地用途的，依照本条例第十八条的规定办理。

Article 25. When the right to use land and the title to the structures on and other attachments to the land are assigned, formalities shall be carried out to register such conveyance in accordance with the regulations. Where the right to use land and the title to the structures on and other attachments to the land are assigned in portion, approval shall be obtained from the land administration department and real estate management department of the municipal or county People's Government and formalities shall be carried out to register such conveyance in accordance with the regulations.

Article 26. Where the assignment price of the right to use land is substantially lower than the market price, the municipal or county People's Government shall have a pre-emptive right of purchase. Where the market price of the assignment of the right to use land rises irrationally, the municipal or county government may take necessary measures.

Article 27. Where it is necessary to change the purpose of a tract of land as specified in the contract for the grant of the right to use such land after assignment of such right, the matter shall be handled in accordance with Article 18 hereof.

第四章 土地使用权出租

CHAPTER IV — LEASE OF THE RIGHT TO USE LAND

第二十八条 土地使用权出租

是指土地使用者作为出租人将土地使用权随同地上建筑物、其他附着物租赁给承租人使用，由承租人向出租人支付租金的行为。

未按土地使用权出让合同规定的期限和条件投资开发、利用土地的，土地使用权不得出租。

Article 28. The term "lease of the right to use land" refers to the act by which a land user, acting as lessor, leases his right to use land together with the structures thereon and other attachments thereto to a lessee for its use, with the lessee paying rent to the lessor. The right to use land may not be leased if the land has not been invested in, developed and utilized in accordance with the time limit and conditions specified in the contract for the grant of the land use right.

第二十九条 土地使用权出租

，出租人与承租人应当签订租赁合同。

租赁合同不得违背国家法律、法规和土地使用权出让合同的规定。

Article 29. When leasing the right to use land, the lessor and the lessee shall enter into a lease contract. Such lease contract may not be in conflict with the provisions of State laws and regulations and the contract for the grant of the land use right.

第三十条 土地使用权出租后

，出租人必须继续履行土地使用权出让合同。

Article 30. After the right to use land is leased, the lessor must continue to perform the contract for the grant of the land use right.

第三十一条 土地使用权和地

上建筑物、其他附着物出租，出租人应当依照规定办理登记。

Article 31. The lessor shall carry out formalities to register the lease of the right to use land and the structures on and other attachments to the land, in accordance with regulations.

第五章 土地使用权抵押

CHAPTER V — MORTGAGE OF THE RIGHT TO USE LAND

第三十二条 土地使用权可以

抵押。

Article 32. The right to use land may be mortgaged.

第三十三条 土地使用权抵押

时，其地上建筑物、其他附着物随之抵押。

Article 33. When mortgaging the right to use land, the structures on and other attachments to the land are mortgaged along with it. When structures on and other attachments to the land are mortgaged, the right to use land underlying such structures and other attachments are mortgaged along with such structures and other attachments.

地上建筑物、其他附着物抵押

时，其使用范围内的土地使用权随之抵押。

第三十四条 土地使用权抵押

，抵押人与抵押权人应当签订抵押合同。

Article 34. When mortgaging the right to use land, the mortgagor and the mortgagee shall enter into a mortgage contract. Such mortgage contract may not be in conflict with the provisions of State laws and regulations and the contract for the grant of the land use right.

抵押合同不得违背国家法律、

法规和土地使用权出让合同的规定

。

第三十五条 土地使用权和地

上建筑物、其他附着物抵押，应当依照规定办理抵押登记。

Article 35. Mortgages of the right to use land and the structures on and other attachments to the land shall be registered in accordance with regulations.

第三十六条 抵押人到期未能

履行债务或者在抵押合同期间宣告解散、破产的，抵押权人有权依照国家法律、法规和抵押合同的规定

Article 36. If a mortgagor is unable to perform his obligations when due, or is declared dissolved or bankrupt during the term of the mortgage, the mortgagee shall have the right to dispose of the mortgaged property pursuant to the provisions of State laws and regulations and the mortgage. Where a land use right and ownership of the structures on and other attachments to the land are acquired as a result of the disposal of mortgaged

处分抵押财产。

property, formalities shall be carried out to register the conveyance in accordance with regulations.

因处分抵押财产而取得土地使用权和地上建筑物、其他附着物所有权的，应当依照规定办理过户登记。

第三十七条 处分抵押财产所得，抵押权人有优先受偿权。

Article 37. Mortgagees shall be entitled to priority compensation from the proceeds from the disposal of the mortgaged property.

第三十八条 抵押权因债务清偿或者其他原因而消灭的，应当依照规定办理注销抵押登记。

Article 38. Where a mortgage is extinguished because of fulfillment of the obligation of the debt or another reason, the registration of the mortgage shall be canceled in accordance with regulations.

第六章 土地使用权终止

CHAPTER VI — TERMINATION OF THE RIGHT TO USE LAND

第三十九条 土地使用权因土地使用权出让合同规定的使用年限届满、提前收回及土地灭失等原因而终止。

Article 39. The right to use land shall terminate due to such reasons as the expiration of the term of use specified in the contract for the grant of the land use right, recovery of the land use right ahead of schedule and loss of the land.

第四十条 土地使用权期满，土地使用权及其地上建筑物、其他附着物所有权由国家无偿取得。土地使用者应当交还土地使用证，并依照规定办理注销登记。

Article 40. Upon the expiry of the term of the right to use land, the right to use land and the title to the structures on and other attachments to the land will be acquired by the State without compensation. The land user shall return the land use certificate and have the registration canceled in accordance with regulations.

第四十一条 土地使用权期满

Article 41. Upon the expiry of the term of the right to use land, the land user may apply for extension of the term. If an

，土地使用者可以申请续期。需要续期的，应当依照本条例第二章的规定重新签订合同，支付土地使用权出让金，并办理登记。

extension is needed, a new contract shall be entered into in accordance with the provisions of Chapter II hereof, a fee for the grant of the right to use land shall be paid and registration formalities shall be carried out.

第四十二条 国家对土地使用者依法取得的土地使用权不提前收回。在特殊情况下，根据社会公共利益的需要，国家可以依照法律程序提前收回，并根据土地使用者已使用的年限和开发、利用土地的实际情况给予相应的补偿。

Article 42. The State will not recover the right to use land obtained by the land user in accordance with the law prior to the expiry of the term of use. Under special circumstances, the State may recover land use rights ahead of schedule in accordance with legal procedure if such early recovery is required in the public interest. In case of such early recovery, the State shall pay the land user an amount of compensation commensurate with the number of years for which the land user has used the land and the actual land development and utilization situation.

第七章 划拨土地使用权

CHAPTER VII — ALLOCATED LAND USE RIGHTS

第四十三条 划拨土地使用权是指土地使用者通过各种方式依法无偿取得的土地使用权。

Article 43. The term "allocated land use rights" refers to land use rights lawfully acquired without consideration by land users by various means. Such land users shall pay land use tax in accordance with the Provisional Regulations of the People's Republic of China concerning Tax on the Use of Urban Land.

前款土地使用者应当依照《中华人民共和国城镇土地使用税暂行条例》的规定缴纳土地使用税。

第四十四条 划拨土地使用权，除本条例第四十五条规定的情况外，不得转让、出租、抵押。

Article 44. Except where Article 45 hereof applies, allocated land use rights may not be assigned, leased or mortgaged.

第四十五条 符合下列条件的

Article 45. Upon approval by the land administration and real

，经市、县人民政府土地管理部门和房产管理部门批准，其划拨土地使用权和地上建筑物、其他附着物所有权可以转让、出租、抵押：

（一）土地使用者为公司、企业、其他经济组织和个人；

（二）领有国有土地使用证；

（三）具有地上建筑物、其他附着物合法的产权证明；

（四）依照本条例第二章的规定签订土地使用权出让合同，向当地市、县人民政府补交土地使用权出让金或者以转让、出租、抵押所获收益抵交土地使用权出让金。

转让、出租、抵押前款划拨土地使用权的，分别依照本条例第三章、第四章和第五章的规定办理。

第四十六条 对未经批准擅自转让、出租、抵押划拨土地使用权的单位和个人，市、县人民政府土地管理部门应当没收其非法收入，并根据情节处以罚款。

estate administration departments of the municipal or county People's Government, allocated land use rights and the title to the structures on and other attachments to the land may be assigned, leased or mortgaged, if the following conditions are satisfied: (1) the land user is a company, enterprise, other economic organisation or individual;

(2) a certificate to use State land has been obtained;

(3) certification of lawful title to the structures on and other attachments to the land is possessed;

(4) a contract for the grant of the right to use land has been entered into in accordance with Chapter II hereof and the fee for the grant of the right to use land has been paid retrospectively to the local municipal or county People's Government by direct payment or by payment through offset against the proceeds from the assignment, lease or mortgage.

Assignment, lease and mortgage of the allocated land use rights as referred to in the preceding paragraph shall be handled in accordance with Chapters III, IV and V of these Regulations respectively.

Article 46. Where an entity or individual assigns, leases or mortgages an allocated land use right without approval, the land administration department of the municipal or county People's Government shall confiscate its/his illegal revenue and impose a fine in the light of the seriousness of the case.

第四十七条 无偿取得划拨土

地使用权的土地使用者，因迁移、解散、撤销、破产或者其他原因而停止使用土地的，市、县人民政府应当无偿收回其划拨土地使用权，并可依照本条例的规定予以出让。

对划拨土地使用权，市、县人民政府根据城市建设发展需要和城市规划的要求，可以无偿收回，并可依照本条例的规定予以出让。

无偿收回划拨土地使用权时，对其地上建筑物、其他附着物，市、县人民政府应当根据实际情况给予适当补偿。

Article 47. Where a land user who has acquired an allocated land use right without consideration ceases to use the land due to removal, dissolution, cancellation, bankruptcy or other reasons, the municipal or county People's Government shall recover the allocated land use right without consideration and may grant the right so recovered in accordance with the provisions of these Regulations. Municipal and county People's Governments may recover allocated land use rights without consideration as the development of urban construction and urban planning may require and may grant the right so recovered in accordance with the provisions of these Regulations.

When recovering an allocated land use right without consideration, the municipal or county People's Government shall give proper compensation for the structures on and other attachments to the land in the light of the actual circumstances.

第八章 附则

CHAPTER VIII — SUPPLEMENTARY PROVISIONS

第四十八条 依照本条例的规

定取得土地使用权的个人，其土地使用权可以继承。

Article 48. Land use rights acquired by individuals pursuant to the provisions of these Regulations may be inherited.

第四十九条 土地使用者应当

依照国家税收法规的规定纳税。

Article 49. Land users shall pay taxes in accordance with the provisions of State tax laws and regulations.

第五十条 依照本条例收取的

土地使用权出让金列入财政预算，

Article 50. The fees for the grant of land use rights collected pursuant to these Regulations shall be included in the budgets and managed as a special fund to be spent mainly on

作为专项基金管理，主要用于城市建设和土地开发。具体使用管理办法，由财政部另行制定。

urban construction and land development. Specific methods for the management of such spending shall be formulated separately by the Ministry of Finance.

第五十一条 各省、自治区、直辖市人民政府应当根据本条例的规定和当地的实际情况选择部分条件比较成熟的城镇先行试点。

Article 51. Each province, autonomous region and municipality directly under the Central Government shall select, in the light of the provisions of these Regulations and the actual local situation, some urban areas where conditions permit to conduct pilot projects.

第五十二条 本条例由国家土地管理局负责解释；实施办法由省、自治区、直辖市人民政府制定。

Article 52. The State Land Administration shall be responsible for the interpretation of these Regulations. Implementing Measures for these Regulations shall be enacted by the People's Governments of the provinces, autonomous regions and municipalities directly under the Central Government.

第五十三条 本条例自发布之日起施行。

Article 53. These Regulations shall come into force as of the date of promulgation.



扫一扫，手机阅读更方便