Do I have a claim in the property bought with the funds from my spouse's parents?

Description

Again this is a post for people who are caught in a divorce proceeding in either China or a foreign country but have marital properties located in China, in particular, real estate such as apartment, house, office or industrial premises.

As a Chinese tradition, parents often buy properties for their children even when they are very young or still babies. Nowadays, if the boy does not have an apartment, then it could be a real block in his way to get married. Girls and their parents will always ask or investigate whether you have bough a property to make sure there is a home for you and her. Given the sky-high property prices in most Chinese cities, it is almost impossible for any fit-for-marriage young guy to buy properties with his own money earned after their work. Most likely the purchase price for the property is mainly or largely contributed with the help of their parents.

For Chinese girls, they often get gifts of properties from their parents as well since she might be the only child of the family (due to China's decades of implementation of the one-child policy).

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I. Rules regarding division of the marital properties bought with funds from parents

You may have read my posts on this blog and understand that China is a country where community property rule applies in regard of marital properties or assets, for example: China Family Law: spouse interests in real properties and corporate equities. But with regard of properties whose purchase price is partly or wholly contributed by the parents of one spouse or both spouses, there are specific rules that shall be taken note.

1. Where the parents contribute fund in the purchase of property by the couple prior to their marriage, the fund contribution shall be deemed as a gift to the child of the contributing parents unless the parents expressly indicate otherwise (in other words, expressly made it clear that it is a gift to both of the couple). On the other hand, where the parents contribute fund in the purchase of property by the couple after their marriage, such fund contribution shall be deed as a gift to both of the couple, unless the contributing parents unless the parents expressly indicate otherwise.

2. Where after marriage, one spouse's parents contribute fund to purchase property whose title is registered in the sole name of the said spouse, this contribution shall be deemed as a gift to the said spouse only and therefore the property shall be considered as the personal and separate property of the said spouse. In other words, upon divorce, the other spouse has no claim in the said property.

Where the property is bought with fund contributed by parents of the both spouses but the property title is registered in the name of one spouse only, this property shall be deemed as tenancy in common with each spouse's proportionate ownership being the percentage of his or her parent's fund contribution, unless otherwise stipulated by the parties thereto.

Clear? If not, leave a question below the post.

II. Applicable Laws

That is not all about the full picture. If you end up fighting for divorce in a China court, then as a foreign-related case, the parties shall be careful about the applicable laws in your case. If you don't make an express choice of applicable laws, the Chinese courts will be more than happy to apply Chinese laws in your case. So before commencing a cross-border divorce proceeding at any court, get your lawyer to work on the applicable law issue and see what applicable will be best for you.

Under China Law on the Choice of Laws in Foreign-related Civil Matters, the relationship between the couple in respect of their marital properties may be agreed by the parties to be governed by any laws of the place of one spouse's habitual residence, the laws of the nationality country, or the laws of the place where the major assets are located. Without such an agreement, the laws of the place where the couple have common habitual residence shall apply, and absent such common habitual residence, the laws of their common nationality country shall apply.

So the applicable laws in your China divorce proceeding may not be the rules explained above. Lawyers may make a wrong decision on this point and once it is wrong, it is a damage forever. Courts won't allow you to change the applicable later on in the same proceeding.

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