Notarize your will to avoid trouble for your heirs/beneficiaries thereunder

Description

Every year I deal with quite a few inheritance cases (litigious or non-litigious) involving foreigners inheriting estate (properties, shares and bank deposits) in China.

Very often, there is a written will produced by one heir to support his or her claim over the estate. The problem is that these wills are not properly notarized, leaving a great deal of uncertainty as to its validity, susceptible to challenge by other completing heirs and even possible denial by courts.

Just recently, a client approached me in relation to his inheritance of an estate property located in Shanghai. It is a property built well before the establishment of the People's Republic of China, and was inherited by the client's grandfather and upon the death of the grandfather, client's father didn't duly complete his inheritance of the property when he was alive, and now the client's father died also, with the estate property still registered in the name of the grandfather. To make things more complicated, the grandfather remarried later on and had other children as well besides client's father.

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Client was confident initially about obtaining the whole title of the estate property as he held two wills: one will written by his grandfather bequeathing the estate property to client's father, and the other one made by his late father bequeathing the same estate property to him. He thought he was going to obtain the full title.

Unfortunately, the Will made in late 70s of twentieth century by the grandfather was not properly notarized. Given the old age of the will, it may also be difficult to find a sample writing for court to compare or for forensic examination. Now if the children from the second marriage challenged the genuineness of the will, it is not easy for the court to decide on whether the will is real or not. If the will is not recognized as a real one, then it will be set aside, resulting in the estate property to be split among all heirs intestate.

So when the genuineness of the will is called into question, it will basically stop an easy way of completing the inheritance of estate, namely, inheriting by way of inheritance right notarization at a local notary office in China. However, when the notary office feels uncertain about the genuineness of the Will, they are reluctant to conduct the inheritance right notarization for the beneficiary in the Will. As a result, you may have to resort to Chinese court for getting your inheritance done, which will take a lot more time and cost.

So when you wish to make a will to dispose of your properties in China (in which case the inheritance process will be governed by the laws of the People's Republic of China in most case, in particular, in regard of real estate), you should consult an estate attorney in China to help you to ensure that your will be finally valid and executable in terms of both its contents and its form.

You can notarize your wills either in China or in a foreign country so long as you follow the notary rules. While we suggest that it is best to have your will notarized in China in accordance with Chinese notary rules (in which case Chinese courts won't have any ground to nullify the will), we do know that Chinese

courts may be well ready to accept a duly notarized will made in a foreign country. I myself personally handled a case involving a will made in the USA that was duly notarized and the will was accepted as valid by a local Shanghai court, which based its decision on the ground that recognizing such foreign notarized wills can help to promote international exchanges between different legal systems, a rationale that may only be found in Shanghai or other international and liberal cities in China. But not everyone is supporting the view of the Shanghai court.

On a separate note, when you do a will outside of China, the language issues can be problematic due to the inaccuracy of Chinese translation. It is better that you choose the drafting language as the prevailing version instead of making both version of being equally authentic.

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