

Gift Real Estate in China

Description

I did a post, [how does a foreigner inherit real properties in China](#), some while ago in which I suggest people thinking of making a gift of their properties to their beloved ones as an alternative of passing the properties to their children, spouses or other family members after death. Hence, there have been inquiry emails from foreigners regarding how they can make a gift of real property to their family members. Here is the summary how a property gift can be done in China between family members.

In essence, a gift of real estate is to transfer the title of the properties, either residential or commercial, from the donor/grantor to the donee/grantee. As always, this is a matter related to real estate, so the Chinese laws will be the applicable law governing the process.

To effectuate a gift of property, there shall be a contract or agreement intending a change of ownership between the donor/grantor and the donee/grantee. Then the parties shall together apply to local real estate registry authority to affect the title transfer which will then result in the issue of a new property ownership certificate bearing the donee/grantee as the owner the property.

In practice, there are two ways of demonstrating the contract between the parties. Firstly, the parties sign one written contract for gift of real estate. Alternatively, where the parties cannot come together to sign the contract, the donor/grantor can first issue a written statement of gift on his or her own in which he or she expresses a clear intent of conveying the property to the donee/grantee, and the donee/grantee will then sign a statement of acceptance of the gift referred to in the donor/grantor's statement of gift.

For effecting title transfer at real estate registry authority, the written contract or statements shall be notarized/legalized. The notarization or legalization shall have to be conducted in China where the real estate is located according to China Notarization Law. In the case of the parties signing one written contract of gift, both donor/grantor and donee/grantee shall come to China to appear in person before notary officer. In the case of separate statement approach, however, the donor/grantor may notarize his statement of gift at their home country and then get the same authenticated by Chinese consulate there before presenting it for title transfer. On the other hand, the donee/grantee shall have to have his statement of acceptance notarized in the local notary office where the real estate is located. Notarization costs. The fee charged for such notarization of real estate gift transaction is 2% of the value of the property being gifted. In practice, such value will be determined through property appraisal. Our experience shows that some notary office in order to secure business is willing to accept value that is intentionally appraised at low level.

After notarization is duly completed, the parties shall go or shall get their agents to go to local real estate registry authority to apply for title transfer. Right before this, the parties shall need to pay the deed tax of 3% of the property value to the government. It shall be noted that if the gift is not made between family members, in addition to the deed tax, the donee/grantee shall also pay an income tax of 20% of the property value to government, which is intended to clamp down fake gifting which is actually a sale transaction. Upon issue of the new real estate ownership certificate bearing the

donee/grantee as the property owner, the gift of real estate is fully done.

We understand that if the recipient of the gift is American citizen, and there is a potential tax pitfall when the recipient resells the same property later, namely, the capital gain tax may easily blow away much profit that could be otherwise avoided if the same property is left to the American citizen by way of inheritance.

Date Created

November 2011

Author

admin

Shanghai Landing Law Offices