

China Supreme Court issued the third judicial interpretation on application of Marriage Law

Description

August 12, 2011, China Supreme Court issued its third judicial interpretation on the application of China Marriage Law, further clarifying rules in dividing marital properties upon divorce. While it is most relevant to Chinese citizens, it will be increasingly relevant to foreigners as more and more cross-border marriages take place in China and more and more couples living abroad have real estate in China.

Here are the major points for your reference:

1. For the first time, the court will allow a couple to sue for dividing marital properties before divorce under two circumstances:

(1) the other spouse has been engaged in concealing, transferring, selling, damaging, squandering community properties or forging fake joint debts ;

(2) the person who one spouse is legally obliged to support is contracted with serious diseases and needs medical treatment and the other spouse refuses to pay for related medical cost.

2. Real property/House that is bought with the fund from one spouse's parents and is registered under the name of this spouse shall not be deemed as community property. In other words, such house will belong to such spouse upon divorce and will not be divided by the other spouse.

House that is bought with the fund from the parents of both spouses and is registered under the name of one spouse shall be deemed as community property to be proportionately owned in line with shares of contribution of funds of their parents, unless otherwise agreed by the parties.

3. Wife who conducts abortion without the consent of the husband will not be subject to liability to husband. This has been debated for years in legal arena and now it is clear the law favors women's will over their own body.

4. Another significant change is related to real property that is bought by one spouse before marriage with mortgage loan that is paid up with community property (esp. salaries). Originally in Shanghai, a real property the purchase contract of which is signed by one spouse before marriage is regarded as the personal property of the spouse even though after marriage the couple are using community property to pay up the mortgage loan on the real property, and upon divorce, this spouse will only need to repay half the portion of the mortgage loan that is paid up during marriage with community property.

Under this new interpretation, upon divorce, if the couple cannot reach an agreement on the disposition of the real property, the court will rule that the house and the remaining mortgage loan will respectively be the personal property and debt of the spouse in whose name the house is registered,

and the portion of mortgage loan jointly paid up by both and the commensurate portion of increased value of the real property shall be regarded as community property and be split between the spouse. It is acknowledged that the natural fruit of the personal real property will be shared by the other spouse who is not the legal owner of the real property.

5. Article 10 provides that in the event that one spouse sells the real property that is the community property of the spouses without the consent of the other property, and bona fide third party purchaser has paid reasonable price and has effected the title transfer of the real property, the other spouse will not be able to regain the property, and may only have the remedy of seeking compensation from the selling spouse upon divorce. Compared with the legal practice in Shanghai prior to this judicial interpretation, this new provision has made it more risky for buyer who buys an apartment/house that is deemed as community property though registered in the name of one spouse, because the other spouse may be able to nullify the transaction if the title transfer has not been completed even though the buyer is a bona fide buyer.

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