

New notary rules to affect real estate transactions in China

Description

On August 14, China Ministry of Justice issued a new notice entitled “Notice of “Five Forbiddances Concerning Notary Work”, listing five notarisations that shall be forbidden in the course of notary businesses by notary offices and notary public.

Among the five forbiddances is the forbideance of conducting notarisation on power of attorney in respect of disposing of real properties which POA covers full and all powers related to the said disposal. Here is the original text:

[illegible]

Literal translation is as follows:

III. It is forbidden to engage in notarisation of all-in power of attorney related to disposal of real properties. Notary agencies and notary officers, when dealing with notarisation of power of attorney related to disposal of real properties, shall follow the principle that “one POA for each significant matter”, informing the client (the applicant for notarisation) of the legal implications and consequences of delegation of powers for creating mortgage, revocation of mortgage, sale and receipt of sale proceeds and the like, and shall not conduct notarisation on one POA that covers all significant matters; POA shall not include irrevocability clause or power that enables the agent to receive sale proceeds on behalf of principal”.

So it is clear that property owners who wish to sell their properties in China can no longer delegate powers related to such property translations in a lump sum manner, as they do in the past before the issuance of the said notice. Now, they will have to break the whole process into several steps according to the significant milestones along the process. What is confusing is that the notice does not set out any criteria to define what are the significant matters in the course of the sale of real estates in China. It remains to be seen how notary offices will deal with the notarisation of power of attorney for selling properties.

This notice, rumored to be part of the co-efforts of Chinese governments to curb property markets (this is understandable from my experiences that many property speculators resort to long-term power of attorney in their property flipping practice), can cause problems in practice in certain circumstances, for example, for old and disabled people and busy people, the notice will make it a lot more difficult and cumbersome to complete sale of their properties as they would need to do several POA instead of one-for-all POA. Associated with this is the increase of notary costs in practice.

As I mostly act on behalf of foreign owners of Chinese properties, who generally issue power of attorneys to me from their home countries, this might also cause uncertainty in practice, if real estate

authorities will give respect to this notice, I mean whether they will raise problems on the POAs done outside of China which will always cover all powers in relation to the sale of their properties in China.

It is my understanding that real estate authorities in China most likely won't reject the all-in POAs done outside of China, as the notice shall be effective on notary offices and officers within China territories.

It is worthy to know that early this year, Shanghai local department of justice issued a notice requiring that local resident property owners in Shanghai shall grant POA to their closest family members only when they intend to sell their properties located in Shanghai.

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