

Should the couple both sign the contract for sale and purchase of the property?

Description

In China, properties, personal or real, acquired during marriage are statutorily prescribed to be community property of the couple even though only the name of one spouse is registered as owner on the relevant title deeds or ownership certificates. Being community property in the case of real property such as apartment, houses, condo, office and other commercial or industrial properties, means that both spouses have equal rights and say in administration, management and disposal of the said properties.

On the other hand, China Property Law has provided that only the owner that is duly registered with real estate registrar is deemed the legal owner of a property. Together with the bona fide acquisition principle prescribed in China Property Law, in reality, a bona fide purchaser that is not aware of the community property attribute of the purchased property can obtain the title thereof legally provided that the prescribed conditions for bona fide acquisition are met. But in practice, to avoid unnecessary legal hassle, it is more advisable for buyers to find out whether the property is a community property of the couple. Otherwise, the other spouse who is not informed of the deal can always file a case against the buyer.

I focus on the following specific situation: the property to be sold is a piece of community property but registered only in the name of one spouse.

Now the buyer, being aware of the community nature of the property, wants to ensure the deal will go through without trouble and he knows he needs the other spouse to give green light to the deal.

Basically, the buyer has two options: (1) ask the other spouse not registered as owner to sign on the real estate sale and purchase contract together with the owner spouse, and (2) ask the other spouse to issue a statement or acknowledgement about the sale of the property in which the other spouse agrees on the sale.

The question is: which option is better? This is not a big question. And probably the answer is quite clear to some people, but not all people.

I am helping a client to handle a real estate dispute with his sellers. The condo apartment is registered in the name of the husband only, but on the real estate sale contract, both the husband and wife signed on the contract. And now at the time of dispute, the couple has already divorced and the wife is nowhere. The problem arises here: to protect the interests of my client, we need to sue both couple because they both executed the contract, but because of the disappearance of the wife, the court cannot serve the legal complaint to the wife, which will make the procedures of the litigation unnecessarily lengthy which can be otherwise simple if the wife had not signed on the contract but issued an agreement statement back at the time of the execution of the real estate sale contract.

So it is a worthy tip for real estate buyers in China to bear in mind. It is a small point but may save a lot of trouble in the case of dispute arising later.



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