

Sell your China property in Beijing: your marital status matters

Description

Maybe it is really time to sell your China properties, either in Shanghai, Beijing or Shenzhen, these first-tiered cities in China.

Despite the fact that China applies its uniform sets of laws throughout the country as a centralized political system, it is not uncommon to find out that different places may have different interpretations of the same piece of laws, resulting in different local practices.

A ready example is the interpretation and understanding of China Marriage Law and China Property Law when it comes to sale of a property registered in the name of one spouse.

In Shanghai, local high court has made it clear that after enactment of China Property Law, the person registered as owner on the title deed of the property has the right to sell the property without regard to whether this property is actually co-owned by his or her spouse as their marital community property. The rationale is simple: China Property Law has made it law that title in real estate is generally created upon registration with property registry authority, and such registration serves as constructive notice to the public as to the ownership of the said property. The public can rely on the property registration information to judge who is the real owner.

However in Beijing, things are a bit different. I am helping a foreign owner in selling his property in Beijing. The property was bought during the marriage life and is however registered only in the name of the husband. Since the husband is not in Beijing, in order to sell the property, he has to grant a power of attorney to his friend in Beijing to act on his behalf in selling the property. So he went to a local notary office to do the power of attorney, surprisingly he was asked to prove his marital status. The problem is that if he said he was single, he would still need to produce a legal document from his home country to prove his single status, and if he said he was married, then he needs to have his wife to sign the power of attorney as well. This is a difficult situation as the client does not want to his pregnant wife to travel to Beijing due to travel fatigue and heavy pollution in Beijing.

Not only the notary offices in Beijing have the requirement but also local banks in Beijing are also following suit. When the buyer applies for a mortgage loan for purchasing the property, in Beijing, the seller must be present to meet the bankers and the bank will also ask the seller to produce evidences of his marital status.

Such requirement is rooted in China Marriage Law in which it is provided that husband and wife have the equal say in disposing major family community asset. A property or asset is of community nature if it is acquired or bought during the life of marriage unless the couple have some prenuptial or nuptial agreement in place providing otherwise. As such, the Beijing client's property is community property despite that only his name is registered in the title deed. Due to this equal say rule in China marriage law, it is understood that disposal of real properties are for sure subject to consents of both spouses even if one of the spouses is not registered as owner.

As a matter of fact, in the past judicial practice even in Shanghai, there are precedent cases where a sale was voided because of lack of consent of the other spouse.

The two approaches in Shanghai and Beijing to the same legal issue reflect two value orientations. Shanghai can be viewed as more liberal and willing to protect the third party interests who relies on China Property Law in judging the ownership of a piece of real estate, while Beijing, clinging more to family value, offers better protection to family member.

There are some other differences related to property sale practice in Beijing and Shanghai. Again, it is my observation that Beijing is more conservative and Shanghai is more liberal.

Date Created

May 2016

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