

Add your name onto the title deed of the property registered in the name of your spouse

Description

We are talking about real estate in the context of a marriage under CHINESE LAWS.

It is not a new topic at all. Ever since Chinese Supreme Court handed down its third interpretation on Chinese marriage law in last August of 2011, in which the court declared that real property that is bought after marriage with the money from the parents of one spouse and registered in the name of this said spouse shall be deemed as gift by the said parents to the said spouse only and therefore shall be regarded as separate property owned by the said spouse only. In other words, such property will not be deemed as community property of the couple. This new rule has spurred a wave of wives requesting to add their names onto the title deed of their family properties. Well, I am one of the husbands that are immersed in the wave. :)

While there is a clear point for the wives to add their names onto the title deed, which turns the otherwise a separate property into community property co-owned by the couple, there has seen a manifest increase of cases in which one spouse, before divorce, sues to ask the court to recognize and confirm his or her ownership in their real estate (houses, or apartments) bought during their marriage but registered for some reasons in the name of the other spouse only. The plaintiff in such a case, the spouse whose name is not appearing on the title deed, generally makes the claim of adding his or her name onto the title deed. People who know of Chinese family laws would contend the necessity of making such a case since they know that under Chinese Marriage Law, any property or asset such as salary of one spouse acquired after marriage are automatically considered as community property of the couple giving half of the ownership in such assets or properties to the other spouse.

While that contention makes a good sense, in practice, the mere declaration by the Chinese Marriage Law of the community property rule is far from enough in protecting the interests of the spouse whose name is not officially registered or appearing on the title deed of the property. Though Chinese Marriage Law requires that mutual consents of spouses are needed in the case of substantial disposal of marital properties, in practice, the spouse whose name is registered on the title deed of the property can manage to sell the property without the knowledge of the other spouse, and with the bona fide third party rules coming into play in regard of transaction of real properties, the bona fide purchaser in such deceptive sale will be protected by law with respect to his title to the property, leaving the other spouse only the remedy to claim damages from the spouse who deceptively sells the property which remedy will go nowhere in the end because of concealment of cash sale proceeds by the deceptive spouse.

Given the vulnerability of the legal interests of the unregistered spouse in the community properties, esp the real properties, it is definitely and highly necessary for the spouse who is not registered as owner of such real properties to take actions to protect his or her own interests when the couple fall out of love with each other or even fight against one another in the divorcing proceeding. This is the case with Chinese couples, so is true of foreign couples or cross-border marriage couple having real

properties in China. Once both names of the couple are registered in the title deed, in practice, neither spouse will be able to sell the property without the consent of the other spouse, an effective measure to eliminate deceptive sale by either spouse.

We are advising a Korean client in defending her interest in one high-end property in Shanghai which is registered in the name of her husband only. The couple are being involved in the divorcing proceeding in a foreign country, and the client believed that her husband is planning to secretly sell the property in Shanghai and cover and conceal the sale proceeds from her. It is crucial for the client to add her name onto the title deed of the real estate in order to prevent her husband's illegal scheme.

Such litigation cases are relatively new, a result of the enactment of Chinese Property Law, effective as of October 1, 2007. The Chinese Property Law has made it clear that title or ownership in real estate shall be deemed as having been created only when the title is duly registered with real estate registry authority. Such new title/ownership rule has made the weakness or drawback of the community property provisions in Chinese Marriage Law appear more apparent and conspicuous than before. Such litigation is actually a perfection of the title of such unregistered spouse in their community property.

In brief, this post is telling you that you have the way to protect your interests in your community property (esp. real estates) when you don't feel safe about your interests therein by taking legal actions to add your names onto the title deed of the community property.

However, there are barriers in your way to add your name onto the title deed in case the real property in question has been mortgaged to banks where the addition of another name onto the title deed is subject to the consent of the bank. But such barrier may be removed in the legal proceeding if the bank is made a party to the proceeding.

For more information about this topic, or you want to further discuss the topic, please contact the blogger of the site.

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