Inheritance of estates in China: you may have to resort to courts

Description

If you are looking for legal information regarding inheritance of estates in China, the blog is for you. You may have read a few posts (how foreigners inherit estates in China, tax issues of inheriting real estate in China, multiple heirs inherit one piece of estate property in China, make a will disposing of properties in China) already and you know that the basic ways of completing inheritance of China estates are:

(1) notarisation of your inheritance right with a local notary office in regard of the estates in question. Notarisation of inheritance right applies to both intestate succession and testate or tesmentary succession, though in practice it is much easier to deal with the case of intestate succession that can allow more a lot of leeway in getting the inheritance done provided that there is no dispute over the inheritance among the heirs; and

(2) litigation, where there is dispute among the heirs that cannot be settled peacefully. This is understandable when there is really a dispute.

An inheritance of estate in China must be done in one way or the other as desicrbed above.

Today in this post, i am talking about a peculiar situation that arises in practice often from time to time where there is no real dispute but the inheritance matter shall still need to be submitted to court for resolution.

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Here is the situation: in preparation of the notarisation of inheritance right with local notary office in China, there is some necessary document that cannot be produced by the client, which renders it impossible for the notary office to complete the inheritance right notarisation. For example, the following are those I have encountered in my work:

1. The client cannot produce the marriage certificate of the deceased whereby it is not possible to decide on whether the estate was bought during marriage or before marriage, which is important for deciding whether the whole property is estate or only half of it is;
2. the client cannot produce the death certificate of the parents of the deceased (esp when the deceased was not too old at the time of death so notary office cannot presume the death of the parents);
3. the deceased was adopted long time ago when China didn't have a sound registration system for its citizens and therefore the client cannot produce the document to prove the death or life of the deceased parents.

there could be more to be added to the list.

So in such a case, notary office will simply direct the matter to court for final solution. After all, in any society, a court is the final resort to resolve dispute. Legal issues that are insurmountable before a notary office can be

Here comes the problem: how can you submit the matter to court when there is no dispute? Clients sometime get puzzled by this.

It is pretty easy indeed. Under China Civil Procedures Law, there are no special proceeding like probate proceeding in Wester countries, so it has to be a normal contentious dispute resolving proceeding. therefore, the client must “make” and present a dispute among the heirs where one heir cannot agree on the inheritance of the estate with other heirs. In the complaint to be submitted to court, it can be briefly stated that the plaintiff heir simply refuses to cooperate with the rest to complete the inheritance of estate so the matter shall have to be submitted to court.

Accordingly, one of the heirs shall stand out as the plaintiff to the proceeding and the rest to be defendants (it does not really matter who serve as the plaintiff and who serve as the defendants).

Then as you can imagine, this will be a pretty easy case to flow through the court room as there is no real dispute there and the parties will not fight fiercely in arguments but act in pretty much harmony.

This is nothing bad to Chinese judges as they know such pratice for long and they will be pretty happy to work on such simply and easy cases.

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