foreigners in Beijing not allowed to receive gifted real properties if not eligible for purchasing

Description

First of all, please note that I have not been able to locate the related decree or notice issued by Beijing local government, therefore not able to verify the captioned statement.

Just recently, in advising a foreign client in inheriting estate apartment left by his late father, I came to learn from local notary office a piece of new rule that was said to take effect from only March of this 2016 under which a foreigner cannot accept a gift of real property unless he is eligible for purchasing a property in Beijing, no matter what relationship/kinship it is between the gift-giver and the gift-receiver.

While it is understandable for local governments to curb foreign investment in its already red-hot property market, it seems to have gone too far to bar gifting between immediate family members which will have an apparent adverse impact on estate planning for foreign clients in China.

In the above-mentioned inheritance matter, the estate apartment was bought during the marriage of the deceased with his wife who is still alive. Legally speaking, as a result of China Marriage Law, the apartment is a piece of community property, half owned by the surviving spouse. In other words, the estate left by the late father is only half of the property, available for inheritance by all statutory heirs pursuant to intestate rules of China Succession Law. As a normal practice of estate planning and for purpose of convenience of future disposal of the property, we often advise clients that it is better for the surviving spouse to inherit the whole property instead of having all heirs appearing on the new title deed.

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However, in the mentioned inheritance case, for foreign tax purposes, the mom and son have agreed that the whole property will go to the son with Mom agreeing to both waive her right to inherit the estate and to gift her half of the property title to the son. By this way, the son will be receiving full title of the property in the end.

Now with the new local rule in Beijing, the gifting of the mother’s half ownership of the property is not doable because the son is not qualified to purchase property in Beijing which qualification requires that the foreigner shall prove that he or she has been living in Beijing for more than one year by virtue of either employment or study in China.

However, to the best of our knowledge, there is no such a rule in Shanghai or any other cities.

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