

Sell China property: your spouse matters a lot sometimes

Description

In advising a client in selling his property outside of Shanghai, I was annoyed by local practice that seems so stupid.

I have sold quite a few properties here in Shanghai on behalf of foreign clients over the years. In Shanghai, things can be simple and straightforward. For example, when a person is registered as a single owner on a title deed of a property, he or she, either national or foreign, is able to sell the property on his or her own. Shanghai real estate transaction centre won't delve to ask whether the owner was married at the time of purchase of the property. The legal ground is firm enough: with the introduction of China Property Law (effective as in 2007), anyone that is duly registered on the title deed of a property is deemed to be legal owner of that piece of property. As a legal owner, she or he shall of course have the power to sell the property as he or she wishes. Whether the owner is married or not does not matter.

But some places outside of Shanghai may have a different practice whereby local real estate authority is always concerned whether the property in question is a community property or the personal property of the owner. If it is a community property, no matter the spouse is registered on the title deed or not, his or her consent to the sale of the property must be presented. Otherwise, they will refuse to effect the title transfer from the registered owner to the buyer.

This practice is old and outdated. It has root in China Marriage Law (latest amended in 2001) in which it is prescribed that major disposal of community properties shall be subject to the mutual consents of the both spouses no matter whether the property is registered in both spouses' names or not. In most cases, properties bought after marriage is automatically regarded as community properties unless otherwise proved between the spouses.

Due to China Marriage Law, in the past before the enactment of China Property Law, sale of a piece of real property is of course considered a major disposal. If the property in sale is community property, the spousal consent shall have to be sought at the time of sale. The point is that some localities in China has not adapted to new legal environment created by China Property Law which should override related rules in China Marriage Law. After all, Marriage law should only take effects between spouses and shall not extend its effects to any third party that relies on the real estate registration records in bona fide manners.

Under the old practice, a foreigner may find themselves in trouble: they have to prove his or her marital status in order to sell the property. If married, please present your marriage certificate, and if not, please prove that you are single.

Those proofs originating outside of China shall have to be notarized by local public notary and then be authenticated by Chinese consulate in the foreign country.

What a nuisance!

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