How does a foreigner inherit real properties in China?

Description

,You may have understood a little bit about how the inheritance/succession law operates in China after reading one of posts here "inherit a real property in China". I have received a few inquiries on how they should make preparation in order to inherit a house in China. As those questions are quite generic in nature, I summarize the related information for your reference.

Bear in mind that we are talking about inheritance of real properties, including land, houses and apartments, excluding personal properties. Basically, inheritance of real estate means the title of the property will be transfered to the heirs of the deceased, a change of real right in regard of the real estate, or otherwise disposed of for the benefits of the heirs.

1. Application of Law

As it is a cross-border legal issue, the first question will be which law should be applied in handling the inheritance matter. With the adoption and effectiveness of The Law of PRC on Application of Laws in Foreign-related Civil Relations as from April 1, 2011, it is more clear in regard of application of laws in inheritance matters.

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In the case of intestate succession of real estate, the laws of the place where the real estate locates shall apply.

In the case of testate succession of real estate, with respect of the form of will, either the laws of the regular residing place, or the laws of the will-maker's nationality or the laws of the place where the will is made, at the time of will-making or death of will-maker, shall apply, and with respect to the validity of the will, either the laws of the regular residing place, or the laws of the will-maker's nationality shall apply.

In either cases, the administration and other related matters of the heritage properties (either real or personal) shall be governed by the laws of the place where such heritage properties are located.

Further, where the rights in rem in respect of real properties are involved, the laws of the place where such real properties are located shall govern.

2. Notarization of Inheritance Right

As mentioned, inheriting a real property in China means that the title deed of the property will pass to the heir by way of effecting title transfer at the local real estate transaction centre where the title deeds of real properties are recorded. To effect the title transfer, one of the most important documents the foreign heir(s) needs to prepare is the notarial deed of right to succession or right to inheritance. Notarization (or legalization, refering to a legal authenticating process), is brought in to ensure the persons are the correct heirs to inherit the properties left by the deceased.

Such notarization on right to inheritance is generally conducted with a notary office in the place of the

real properties. To apply for such a notarial deed, the applicant or the heir(s) shall present evidences to prove (1) the death of the deceased, (2) the familial relationship with the deceased (husband-wife, parent-children or other relationship entitled to succeed) and (3) the title deed of the real property to be inherited.

In the case of testate succession, it is easier to do the notarization by submitting the duly notarized will made by the deceased. It shall be noted that the will made by the deceased shall have to be notarized or otherwise authenticated in accordance with the local laws. Otherwise, Chinese notary office may not be able to issue a notarial deed of right to inheritance, in which case the inheritance will have to be handled at Chinese courts at the place of the real estate.

In the case of intestate succession, the applicant heir shall have to prove that therer are no other heirs or such other heirs have waived their right to inheritance, and if a non-waiving heir has died at the time of succession, the applicant(s) shall also need to submit evidences showing the spouse or children of such dead heir. However given that Chinese notary office has very limited ability and resources to ascertain and verify the heirs of the deceased, generally the notary office will ask the heir(s) to make a written statement that there is no dispute over his right to succession/inheritance, and he or she will take liabilities if later any dispute arises in respect of his or her right to succession.

Notarization of right to inheritance can be done with the assistance of an agent in China so that the foreign heir(s) will not have to come to China themselves. For example, you can entrust a China lawyer to help you with notarization of your right to inheritance. But your power of attorney granted to your agent shall have to be notarized in your home country and authenticated or attested by a Chinese embassy or consulate in your country.

[***UPDATED*** *on November 2017: China justice ministry has now issued new notary rules regarding inheritance right notarisation. The gist is that people don't have to do inheritance right notarisation in order to complete the inheritance of estate of real properties, and instead, the heirs, beneficiaries can now go to real estate authority to present all inheritance documents to complete the inheritance of real properties. Sounds good, right? But for foreigners who have estate in China, it may be impossible for everybody to come over to effect the estate inheritance due to time, age or health, so it may be still advisable to hire a lawyer in China to help with estate inheritance. Indeed, notary feels for inheritance right notarisation has deceased a lot in Shanghai as a response to the change of notary rules in relation to inheritance of real properties. Why? Because if they don't reduce the fee, they won't get inheritance right notarisation business as much as before. With the reduction, many people will still think it a good idea to carry out inheritance through the notary office instead of getting everybody to appear at real estate authority.*]

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3. Inheritance Litigation

disputes shall have to be solved at courts.

Put it simple, whenever there is a dispute regarding the inheritance of estate, the parties shall need to go to court and the court will decide how the estate will be inherited, disposed and distributed or disbursed among all interested parties.

In some cases, when even there is no dispute among the heirs or beneficiaries, other reasons that may lead the notarisation route to an impasse, for example, as in one of the cases at hand now, the client

simply cannot produce the evidence to prove the death of his deceased father's parents. In this case, notary office will not issue the inheritance right notarisation. Then the only way out of the impasse is to go to court. You may feel puzzled about how you can go to court without a real dispute. But oh yeah, we can do it for you by creating a fake dispute with the single view to getting the court involved to break the impasse.

4. Alternative Way of Disposing of Real Properties before death

It is always a complicated thing to undergo the proceeding for inheriting a real property in China. Alternatively, it is Jason's suggestion to clients that if possible, clients should make arrangement for disposing of their real properties in a foreign country before death.

For example, the person that is going to expire may choose to pass the title of the real estate to their beloved spouse or children by way of gifting before they die. Or simply, they sell their properties in China and repatriate the sale proceeds to their home countries and ditribute the cash among their beloved ones. Though there will be transaction taxes to be levied, it may be worth doing in light of the hassle and trouble their heirs will have to tackle in order to inherit the properties after their death.

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