

Recognition of Ownership of Maritally Gifted Real Estate upon Divorce

Lian Liu

School of Southwest Petroleum University, Chengdu 610500, China

Abstract

Article 5 of the Interpretation on the Marriage and Family Chapter of the Civil Code addresses the issue of determining ownership of real estate gifted between spouses upon divorce, breaking through the traditional adjudicatory approach that treated such acts as ordinary gifts and emphasizing the need for comprehensive discretion in light of the special nature of marriage and family. Previously, under the rules of the Contract Chapter of the Civil Code, the donor could exercise the right of arbitrary revocation before the property rights were transferred. However, the new provision requires courts, in divorce disputes, to comprehensively consider factors such as the duration of the marriage, the party at fault, and the economic circumstances of the parties, to adjudicate the ownership of the real estate and determine a compensation plan. Only when the donee has committed fraud, coercion, or circumstances warranting statutory revocation will a request for return be supported. Academic opinion on this issue is divided: the ordinary gift theory holds that the rules of the Contract Chapter apply, permitting revocation; the marital property regime contract theory argues that the special nature of the personal relationship should exclude the right of arbitrary revocation, directly producing real rights effect; the special gift conditioned on marriage theory holds that it is fundamentally different from a marital property regime contract—marital gifts remain gifts but are based on marriage and cohabitation, possessing characteristics of long-term cooperation, reciprocity, and sharing. Article 5 of the Interpretation (II) on the Marriage and Family Chapter of the Civil Code, through refined differentiation between identity law and property law rules, balances "gratuitousness" with marital ethics, avoids imbalance of interests, and responds to the adjudicatory conflicts in judicial practice caused by divergent determinations of legal nature. It both safeguards the interests of the marital community and protects individual property rights, providing more adaptive institutional safeguards for building harmonious family relationships.

Keywords

Marital real estate gift; gift contract; conditional gift; right of arbitrary revocation; right of statutory revocation.

1. Introduction

On January 15, 2025, the Supreme People's Court issued the Interpretation (II) on the Marriage and Family Chapter of the Civil Code, which officially came into effect on February 1. The Interpretation (II) provides legal responses to the complex demands of contemporary society, offering legal guidance for the complication of family relationships under new circumstances, providing stronger legal weapons for resolving family conflicts through improved legal rules, maintaining public order and good morals, balancing the protection of individual property rights and the interests of the marital family community, and promoting the harmonious development of marriage and family relationships. Real estate, as the core asset of the family, is commonly subject to gift transactions in marriage. Consequently, disputes over ownership determination arising from real estate gifts in divorce proceedings account for a relatively high

proportion, and judicial decisions have also exhibited inconsistencies in similar cases. To this end, Article 5 of the Interpretation (II) focuses on resolving the issue of determining ownership of real estate gifted between spouses upon divorce. For situations where the transfer registration of the house has not yet been completed, prior to the implementation of the Interpretation (II), people's courts generally treated gifts between spouses as ordinary gifts, and the giving party could revoke the gift before the change of registration in accordance with the provisions of the gift contract chapter of the Contract Chapter of the Civil Code. However, under Article 5, the giving party cannot arbitrarily revoke the gift; the people's court should, based on the actual circumstances of the marriage and family, adjudicate the house to belong to one of the parties, and determine whether the party obtaining the house should compensate the other party and the specific amount of compensation, so as to achieve a more fair and reasonable division of marital property.

2. Review of Relevant Norms

Article 1063 of the Marriage and Family Chapter of the Civil Code provides for the scope of personal property of spouses, stipulating that one party's premarital property is personal property and does not convert into community property due to the continuation of the marriage relationship. If the gifted real estate is premarital personal property, clear ownership requires a written agreement or transfer registration. Article 1065 stipulates the marital property agreement system, whereby spouses may, through written agreement, stipulate the ownership of one party's premarital property and property acquired during the marriage. Article 658 of the Contract Chapter of the Civil Code provides that in an ordinary gift contract, the donor may exercise the right of revocation before the transfer of the rights to the gifted property. However, this provision does not apply to notarized gift contracts or gift contracts that are legally irrevocable and have the nature of public welfare or moral obligation such as disaster relief, poverty alleviation, and disability assistance. Based on the above regulations, regarding the determination of ownership of real estate gifted between spouses upon divorce, there has been divergence as to whether Article 1065 of the Civil Code (the marital property agreement system contract) serves as the legal basis or whether Article 464, Paragraph 2 of the Civil Code (the gift contract rules) serves as the legal basis for agreements on real estate given between spouses. Article 32 of the Interpretation (I) on the Marriage and Family Chapter of the Civil Code provided a solution to this issue, stipulating that where, before marriage or during the marriage relationship, the parties agree to gift one party's real estate to the other party or to joint ownership, and the donor revokes the gift before the change of registration of the gifted real estate, and the other party requests an order for continued performance, the people's court may handle the matter in accordance with Article 658 of the Civil Code, i.e., directly applying the rules of gift contracts. However, to balance individual property rights and the interests of the family community, people's courts should, when specifically applying the law, focus on distinguishing the differences between identity law and property law and adopt more refined operations. Therefore, Article 5 of the Interpretation (II) on the Marriage and Family Chapter of the Civil Code provides that where, before marriage or during the marriage relationship, one party changes the registration of real estate it owns to the other party's name or to both parties' names, and in divorce proceedings, that party requests the other party to return it, the people's court shall, based on the party's request, in light of the purpose of the gift of real estate, and comprehensively considering facts such as the duration of the marriage relationship, divorce fault, and the economic circumstances of both parties, adjudicate the house to belong to one party, and with reference to the market price of the house, order the party obtaining the house to provide appropriate compensation to the other party, unless the parties have a special agreement. Under the circumstances specified in

the preceding paragraph, where the donor has evidence proving that the donee has committed fraud, coercion, or circumstances specified in Article 663 of the Civil Code, and requests revocation of the agreement, the people's court shall support it in accordance with law. This article responds to the judicial practice need to address the frequent occurrence of inconsistent judgments in similar cases caused by different determinations of the nature of real estate gifts between spouses upon divorce, leading to the application of different legal provisions.

3. Current Status of Research on the Nature of Real Estate Gifts Between Spouses and Opinions

Before the promulgation of Article 5 of the Interpretation (II), in judicial practice, agreements between spouses regarding real estate gifts easily gave rise to disputes, and both judicial practice and academic doctrine exhibited multiple positions on this issue, mainly including the following four:

3.1. Ordinary Gift Theory

The Supreme People's Court (hereinafter referred to as the SPC) held that regardless of whether one spouse agrees to give property to the other spouse exclusively or to both jointly, it is essentially a gift act and should be subject to the gift contract rules of the Contract Chapter of the Civil Code. Some scholars believe that the provisions of contract law on gifts do not exclude property gifts between spouses, and agreements in the field of marriage and family also involve the issue of property rights ownership; therefore, there is no conflict between the two.

However, an agreement to gift real estate is actually different from an ordinary gift. First, from the perspective of constitutive requirements, Article 657 of the Civil Code provides: "A gift contract is a contract whereby the donor gives its own property to the donee gratuitously, and the donee expresses acceptance of the gift." The most essential characteristic of a gift contract is gratuitousness; it is not reciprocal—only the donor provides benefits, and the donee merely accepts such benefits. In a marital relationship, however, the recipient does not necessarily merely accept the gift; often, when the donor gives benefits, it is with the expectation of maintaining family harmony and expecting the donee to continue contributing to the family, and the donee will also silently fulfill this invisible obligation. Such a gift is ostensibly gratuitous but substantively onerous, objectively gratuitous but subjectively onerous. German legal theory holds that the act of one spouse giving substantial assets to the other "lacks 'subjective' gratuitousness, but rather regards the other party's performance in the family as the consideration for such giving." Second, from the perspective of legal effect, ordinary gift rules allow the donor to exercise the right of arbitrary revocation; after the contract is formed but before performance is completed, the donor may arbitrarily exercise the right of revocation. The justification for the right of arbitrary revocation lies in the fact that only the donor bears unilateral performance responsibility, the donee does not pay consideration, and therefore the donee has no expectation interest; moreover, in the process of unilateral giving, if defects such as mistake, fraud, or coercion occur, allowing revocation of the gift can protect the donor's interests. However, as stated above, a marital real estate gift is not truly gratuitous. If the donor is allowed to arbitrarily exercise the right of revocation, it may harm the interests of the donee, especially where the donee has no marital fault and has contributed significantly to family life and children's education, resulting in particularly obvious imbalance of interests. Finally, debt law regulates property relationships between purely ordinary civil subjects, while family law regulates identity relationships between special civil subjects, as well as property relationships associated with identity relationships. A marital real estate gift is a property relationship with strong identity characteristics; therefore, property acts related to identity in the field of family law cannot directly apply the gift contract rules that are institutions of debt law.

3.2. Marital Property Regime Contract Theory

Although a marital property regime contract and an agreement for gratuitous real estate giving between spouses both belong to the broad category of marital property agreements, there are essential differences between the two. First, the core of a marital property regime contract lies in both parties reaching a consensus on the property regime, i.e., the marriage parties or those intending to marry establish a property relationship system through agreement, whereas an act of gratuitous real estate giving manifests as a unilateral transfer of property rights and interests. Second, from the perspective of functional positioning, the former aims to construct the overall institutional framework of property relationships, while the latter only targets the ownership change of specific property. Third, in terms of temporal effect, a property regime contract has a future-oriented character, mainly regulating the ownership and management of property acquired after marriage; whereas gratuitous giving, although it may involve future rights and interests, is essentially a reconfiguration of existing property relationships. Fourth, in terms of contract nature, a property regime contract is a continuing legal act whose effect runs through the duration of the marriage and has general binding force. As a scholar stated: "Where a marital property regime contract exists, a single agreement of the parties can produce continuous binding force on property continuously acquired during the marriage relationship; it is an arrangement by both parties regarding future objects and ownership of rights, possessing the characteristics of long-term, comprehensive adjustment."; whereas an agreement for gratuitous real estate giving is a one-time contract that terminates upon completion of the rights transfer. Therefore, an act of gratuitous transfer of specific real estate between spouses does not constitute a property regime contract; it is not an overall arrangement for future property relationships and does not belong to a marital property regime contract.

Against the background of current social transformation, the diversification of family property forms and changes in marital ethics have given rise to new challenges. Some marriage participants exploit institutional loopholes to commit property fraud, typically manifested as: fabricating marital relationships to obtain the other party's property, making transfer of real estate a condition for entering marriage, and even circumventing property transaction restrictions through marital relationships. In view of this, under the current situation where the agreed property system is not yet complete, if marital property agreements outside the agreed property system are forcibly incorporated into the agreed property system and given real rights change effect, it may cause chaos in property order and ethical controversy.

3.3. Marital Property Regime Contract and Gift Classification Theory

This theory holds that the main contradiction concerning the nature of marital real estate gift agreements centers on the relationship between the marital agreed property system and the gift system, and that different characterizations should be made according to the different directions of property giving; if the spouses agree to change one party's personal property into joint ownership of both parties, it is a marital property regime contract; if the spouses agree to give one party's personal property to the other party exclusively, it is a gift between spouses. From the Interpretation (III) on Marriage Law to the Interpretation (I) on the Marriage and Family Chapter, none mentioned a solution to the relevant issue. According to the wording of Article 32 of the Interpretation (I) on the Marriage and Family Chapter, not only was no reasonable treatment provided, but it was instead a compromise with reality. Regarding the question "if 99% of personal property or a certain property is agreed to be given to the other party, it is regarded as a marital property agreement, while if 100% is agreed to be given to the other party, it is regarded as a gift between spouses—is this fair?" the relevant provisions made a supplement: changing "the parties agree to gift one party's real estate to the other party" to "the parties agree to gift one party's real estate to the other party or to joint ownership." This

approach indeed resolved some doubts to a certain extent, and handling it as a gift contract was also more consistent with the logic of the previous provisions. However, this rule further expanded property law into other fields. Without clearly explaining the key issue of the nature of real estate between spouses, it is bound to cause greater conflict.

3.4. Special Gift Theory Based on Marriage

There are also several different views within the theory that treats marital real estate giving as a special gift based on marriage. The first advocates characterizing it as a conditional or obligation-attached gift, a view that can draw inspiration from German case law at the comparative law level. The "giving conditioned on marriage" system developed by German case law has reference value for China's judicial practice. According to the holding of the German Federal Supreme Court, property transfers between spouses are generally presumed to have an implied condition of "continuation of the marital community," rather than being subject to ordinary gift rules. Such acts essentially constitute a special agreement in family law—namely, taking the continuation of the marital relationship as an implicit transaction basis. Its institutional core is embodied as follows: although the property transfer act of one spouse is ostensibly gratuitous, it implicitly contains the expectation of maintaining the marital common life, and such expectation constitutes the substantive consideration of the legal act. Specifically, the determination of "giving conditioned on marriage" requires two elements: first, the subjective purpose element, i.e., the property transfer must be directly motivated by concluding, maintaining, or safeguarding the marital common life; second, the common rights expectation, i.e., the giving party by default enjoys continuing common rights and interests in the subject property and its proceeds. For example, in a real estate transfer scenario, if a husband changes the registration of his personal real estate to joint ownership of the spouses, beyond the surface ownership change, it actually implies an expectation of common use and income distribution during the continuation of the marriage. When the marital relationship breaks down not due to the fault of the giving party, German courts may, based on the "loss of transaction basis" rule under Article 313 of the German Civil Code, comprehensively consider factors such as the duration of the marriage and the use of the property, and order the recipient to return part or all of the property. This flexible handling mechanism both avoids excessive protection of the donee under ordinary gift rules and prevents the substantive restriction of divorce freedom by conditional gift theory, providing an institutional reference for China to balance marital ethics and property justice.

The second theory advocates characterizing marital real estate giving as a gift with moral obligation nature, i.e., holding that real estate gift agreements aimed at maintaining marriage and family relationships should apply the provisions on gifts with moral obligation nature under Article 186 of the former Contract Law. However, this view faces a dual argumentative dilemma at the theoretical level: first, the equivalence between marital and family ethical responsibility and statutory moral obligation is questionable. Although the expectation of creating a happy marriage has ethical value, equating it directly with moral obligation in the context of the Contract Law lacks normative basis. In judicial practice, the dissolution of marriage relationships mostly arises from complex factors such as emotional breakdown, and it cannot be automatically presumed that the donee's filing for divorce constitutes a violation of moral obligation. For example, in a no-fault divorce scenario, requiring the donee to bear the moral shackles of not being allowed to dissolve the marriage because of accepting real estate is clearly contrary to the principle of freedom of marriage. Second, there is a logical rupture in the correspondence of obligated subjects. Even if it is recognized that the donee bears a moral obligation to maintain the marriage, it cannot be reversely inferred that the donor's gift is performed to fulfill a moral obligation; there is no necessary causal connection between the two. The subjective motive of the gift act and the legal characterization of moral obligation must be

strictly distinguished, and moral evaluation and legal characterization cannot be conflated because of the special nature of the marriage relationship.

The third theory defines marital real estate giving as a purposive gift, i.e., the donor transfers property based on a specific marital purpose (such as maintaining family stability), and when the preset purpose (such as continuation of the marriage) is not achieved, the donor may claim return of the property. In this regard, academic criticism points out that this theory mechanically applies traditional civil law rules and ignores the particularity of the family field, which requires balancing emotional factors and substantive fairness. Its institutional rigidity is embodied in: once the marriage relationship is dissolved, regardless of the cause of breakdown, differences in contributions of both parties, or the degree of family contribution of the donee, the donor may invoke the unjust enrichment claim to demand full return of the property. For example, in a no-fault divorce scenario, if this rule is mechanically applied, it may cause the donee who has long borne housework or child-rearing responsibilities to lose property rights and interests due to the termination of the marriage, resulting in significant imbalance of rights and obligations. This "zero-sum game" adjudicatory logic both violates the value orientation of marriage law to protect the interests of the weaker party and fails to reflect the ethical factors and individualized equity needs to be considered in family dispute adjudication.

4. Application of Article 5 of the Interpretation (II) in Determining Real Estate Ownership

4.1. Restricting the Use of the Right of Arbitrary Revocation

A marital real estate gift cannot be characterized as an ordinary gift but should be a special gift with conditions. The gift is not truly gratuitous; its conditions are the continuation of the marriage and contribution to the family. It is the donor's expectation toward the donee when giving the house, and is essentially objectively gratuitous but subjectively onerous. When the donee has no marital fault and bears primary responsibility in family affairs and child rearing, allowing the donor to exercise the right of arbitrary revocation would result in a significant imbalance of interests. Before the implementation of the Interpretation (II), courts tended to treat marital real estate gifts as ordinary civil gifts, granting the donor the right of arbitrary revocation before transfer of rights. Although this interpretation conformed to the literal meaning of the Contract Chapter of the Civil Code, it deviated from the value orientation of marriage law. It is worth noting that lower courts in judicial practice did not blindly follow it, but instead broke through existing normative limitations under specific circumstances through methods such as expansive interpretation of statutory revocation grounds, flexible determination of fraud elements, and invocation of the frustration of contract purpose theory. For example, in cases where ownership change registration had been completed but the marriage broke down shortly thereafter due to the donee's fault, some courts allowed the donor to claim revocation through purposive restrictive interpretation; for gift agreements that were not notarized but involved major misunderstanding, they achieved individualized equity by expanding the standard for determining the "fraud" element. The above flexible application methods adopted in China's judicial practice remain too strained in terms of interpretive theory, contain systemic contradictions at the level of legal interpretation, and are difficult to form generally applicable adjudicatory standards. In response to such problems, the Interpretation (II) subsequently provides that after the gift contract is formed and before actual performance, the giving party does not enjoy the right of arbitrary revocation; the house involved in the name-adding act may be adjudicated to either party, but whether to compensate the other party and the specific amount of compensation must be determined by comprehensively considering various factors. For example, in "Li v. Zhou Divorce Case," although the husband promised during marriage to add the wife's name to his personal real estate, because the change of

registration was not completed, the court ultimately awarded the wife 40% of the discounted price based on her long-term contribution to the family. This provision effectively curbs the behavior of using "name-adding" promises for interest gaming, maintains the seriousness of property agreements, restricts the exercise of the donor's right of arbitrary revocation, protects the legitimate rights and interests of the donee, remedies the defect of directly applying gift contract rules, and substantively recognizes the "non-purely gratuitous nature" of marital gifts, achieving coordination between identity law and property law rules.

4.2. Application of Changed Circumstances in Article 5 of the Interpretation (II)

After a marital real estate gift is completed, it may also happen that within a short period, the parties' relationship breaks down and they divorce not due to the fault of either party. In such a case, how can the giving party's interests be remedied? The agreement on giving real estate between spouses is a conditional gift contract; therefore, the changed circumstances system of the Contract Chapter of the Civil Code may be borrowed to adjust special situations where the purpose of the real estate gift cannot be achieved or fully achieved for various reasons. It is generally believed that Article 553 of the Civil Code includes only changes in objective basis, not subjective basis. However, as stated above, the act of giving real estate between spouses has an implied purpose or transaction basis, different from an ordinary gift contract. This purpose or transaction basis is usually to establish, maintain, or consolidate the marital and family relationship, and to enhance mutual affection and family cohesion. In practice, there are indeed situations where the subjective basis conditions undergo major changes, but disputes over real estate given between spouses more often arise from the incomplete realization of subjective purposes. In this regard, the method of purposive expansive interpretation should be adopted. In the case of divorce, the situation where the purpose is not achieved should be regarded as a change in the basic conditions, which may be determined to constitute a major change unforeseeable by the parties. The purpose of the marital real estate gift cannot be achieved, and the changed circumstances system may be applied by reference for adjustment, so as to achieve substantive justice. However, China's marriage law adopts the "no-fault divorce doctrine." Where both spouses have no marital fault but the divorce is initiated and achieved by the party giving the real estate, that party should not be allowed to invoke the loss of transaction basis rule to revoke or rescind the gift, so as to avoid the moral hazard of "the giving party unilaterally initiating divorce constituting an arbitrary condition for rescinding the gift." Where neither party has marital fault and the divorce is initiated and achieved by the donee, the giving party may invoke the changed circumstances rule; this is the main scenario for the application of this rule. Where divorce is filed by one party after transfer registration has been completed, if the parties have lived together for a relatively short time and the recipient has divorce fault, although performance has been completed, consideration may still be given to expansively interpreting Article 553 of the Civil Code to allow the giving party to rescind the contract on the ground of changed circumstances. Article 5 of the current Interpretation (II) specifically provides for such situations: where, before marriage or during the marriage relationship, one party transfers the registration of real estate it owns to the other party or to both parties' names, and in divorce proceedings, the parties dispute the ownership or division of the house and negotiation fails, if the marriage relationship has lasted for a relatively short time and the giving party has no major fault, the people's court may, based on the party's litigation request, adjudicate that the house belongs to the giving party.

4.3. Exercise of the Right of Statutory Revocation

Paragraph 3 of Article 5 of the Interpretation (II) provides that where the giving party has evidence proving that the other party has committed fraud, coercion, seriously infringed upon the lawful rights and interests of the giving party or its close relatives, or has a support obligation to the giving party but fails to perform it, and requests revocation of the civil legal

acts specified in the preceding two paragraphs, the people's court shall support it in accordance with law. This article reflects the application of the right of statutory revocation in determining marital real estate gifts. The relationship between the right of statutory revocation in gift contracts and the changed circumstances system should be that of special provisions and general provisions. According to the basic legal application principle that special provisions take priority over general provisions, if the circumstance of "seriously infringing upon the donor's lawful rights and interests" occurs, there is no need to invoke the general changed circumstances system; the statutory revocation system may be directly applied. Although giving real estate between spouses is an agreement regarding property between spouses and does not apply gift contract rules, "the provisions on the right of statutory revocation are established on the basis of the morality and reciprocity of gifts, and therefore also apply to marital giving based on marriage." If the donee seriously infringes upon the donor's lawful rights and interests, even if the property rights have been transferred, the donor still has the right to unilaterally revoke the gift. As to what constitutes "seriously infringing upon the donor's lawful rights and interests," Paragraph 3 of Article 5 of the Interpretation (II) refines it by specifying circumstances such as fraud, coercion, serious infringement upon the lawful rights and interests of the giving party or its close relatives, and failure to perform support obligations to the giving party. By further refining vague concepts into specific circumstances, it helps judges apply the law more accurately when handling similar cases and reduces inconsistent judgments in similar cases. However, Paragraph 3 of Article 5 of the Interpretation (II) does not provide for the situation where the spouse receiving the real estate has major marital fault and the spouse giving the real estate also has fault, and whether the latter can exercise the right of statutory revocation. Article 1091 of the Civil Code provides that the requirement for divorce damages is that the claimant must not have fault of the same nature. This means that if the donor and the donee simultaneously have major marital fault, the donor cannot exercise the right of statutory revocation. However, if the donee has major marital fault and the donor has ordinary marital fault, the donor is allowed to exercise the right of statutory revocation, but after revocation of the gift, return should be made as appropriate based on the degree of fault of both parties.

5. Progressive Aspects and Suggestions for Improvement of Article 5 of the Interpretation

5.1. Progressive Aspects of Article 5 of the Interpretation

The innovation of Article 5 of the Interpretation (II) on the Marriage and Family Chapter of the Civil Code regarding the rules for determining ownership of marital real estate gifts is an important breakthrough in China's marriage and family law in balancing individual property rights and the interests of the family community and responding to the needs of judicial practice. Through normative review, doctrinal analysis, and judicial practice analysis, this article draws the following conclusions:

First, Article 5 breaks through the mechanical application of traditional gift contract rules. Before the implementation of the Interpretation (II), courts tended to treat marital real estate gifts as ordinary civil gifts, allowing the donor to exercise the right of arbitrary revocation under the Contract Chapter of the Civil Code. However, the ethical and identity nature of the marriage relationship determines that such gifts have the characteristic of being "ostensibly gratuitous but substantively onerous." The inspiration from the German legal theory of "consideration for family performance" and Chinese scholars' discussion of the "reciprocity of invisible obligations" both indicate that simply applying property law rules would ignore the particularity of the marriage relationship. Article 5, by introducing a "teleological" and "comprehensive discretion" mechanism, requires courts to determine ownership and

compensation by combining factors such as the duration of the marriage, divorce fault, and economic circumstances, substantively recognizing the "non-purely gratuitous nature" of marital gifts and achieving coordination between identity law and property law rules.

Second, Article 5 reconstructs the logic for determining the validity of marital property agreements. Article 32 of the Interpretation (I) previously clarified that marital real estate gifts are subject to the revocation rules of the Contract Chapter, but this path led judicial practice into the dilemma of "inconsistent judgments in similar cases." By comparing the normative conflict between Article 1065 of the Civil Code (marital property agreement) and Article 658 (gift contract), this article finds that the traditional adjudicatory logic did not fully distinguish between "ordinary gifts" and "exchange of interests in the marital community." Article 5, by creating an "exception proviso clause" that incorporates revocation grounds such as fraud and coercion into the scope of review, both retains the remedial function of the Contract Chapter and limits the abuse of the right of arbitrary revocation oriented by identity law values, providing a more flexible adjudicatory framework for determining the nature of marital property agreements.

Third, Article 5 strengthens the judicial orientation of substantive fairness. Empirical research shows that in divorce real estate disputes, the adjudicatory model of "revocation if not transferred" easily causes damage to the rights and interests of the donee (mostly women or the party without housing). For example, in "Wang v. Li Divorce Case," the husband promised before marriage to gift a house but did not transfer it; after the court revoked the gift under the Contract Chapter, the wife fell into economic hardship due to long-term assumption of family labor. Article 5, by granting judges discretionary power through the "compensation discretion rule," requires the party obtaining the real estate to compensate the other party with reference to the market price. This not only remedies the erosion of substantive fairness by formal equality but also better conforms to the legislative purpose of Article 1041 of the Civil Code "to protect the lawful rights and interests of women."

5.2. Limitations of Article 5 of the Interpretation (II) and Suggestions for Improvement

This rule still has three limitations: first, the ambiguity of compensation standards: the provision only stipulates compensation "with reference to market price" but does not specify the calculation method (e.g., whether to deduct contributions to joint loan repayment during marriage), which may give rise to new adjudicatory divergences; second, imbalance in the allocation of burden of proof: the donor is required to prove "fraud or coercion" to revoke the agreement, but the weaker party in the marriage relationship often lacks awareness of evidence preservation; third, absence of formal requirements for agreements: there is no mandatory requirement that gift agreements be concluded in written form, which may exacerbate disputes over the validity of oral agreements.

In the future, improvements may be made through the following paths: first, the Supreme People's Court should issue guiding cases to refine compensation calculation standards; second, drawing on the experience of German family law, establish a recommended notarization system for marital property agreements to strengthen evidence fixation; third, promote supporting judicial interpretations of the Civil Code to clarify the written form requirements for "major interest gifts" and reduce adjudicatory uncertainty. Only through the coordination of refined rules and supporting institutions can the dynamic balance between the "stability" of marital property order and "individual justice" be achieved.

6. Summary

The promulgation of Article 5 of the Interpretation (II) marks a major breakthrough in China's marriage and family legal system in handling disputes over real estate gifts between spouses. Aiming at the long-standing problem of inconsistent judgments in similar cases in judicial practice, this provision achieves precision and fairness in legal application by unifying adjudicatory rules and refining consideration factors. It both responds to society's practical needs for resolving marital property disputes and provides more operational guidance for balancing marital ethics and property rights. Through summarizing relevant regulations, examining relevant controversial theories, and analyzing the reasonableness of treating marital real estate giving as a conditional or obligation-attached gift as well as the application of Article 5 of the Interpretation (II) in determining real estate ownership, this article concludes that Article 5 of the Interpretation (II), by integrating legal rationality with marital ethics, provides a more adaptive solution for disputes over real estate gifts between spouses and is an important example of China's marriage and family law moving from formal equality toward substantive justice. In the future, it is still necessary to further refine adjudicatory standards through the accumulation of typical cases and promote the continuous coordination of legal rules and social values.

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