

# A Study on the Legal Nature and Application Rules of Real Estate Gifts among Spouses

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**Abstract:** Real estate gifts between spouses are rooted in marital identity and possess dual attributes of identity ethics and property circulation, representing a typical issue in marital and family property disputes. China's current legislation does not provide special regulation for such acts. Judicial practice has long applied the rules of general civil gifts, overemphasizing the validity of registration and the right of arbitrary revocation under property law, while ignoring the particularity of marriage, the value of housework, and the reasonable reliance of the donee. This has led to problems such as conflicts in legal application, inconsistent judicial standards, and imbalanced interest distribution. In terms of nature identification, real estate gifts between spouses are fundamentally different from ordinary civil gifts and spousal property agreements. Their core feature lies in being based on marital continuity, family mutual assistance, and emotional maintenance, rather than mere gratuitous transfer. Regulating such gifts solely by property law fails to reflect the ethical characteristics of the marital community and can hardly balance autonomy of will and transaction security. Therefore, the nature identification should abandon the unitary approach and adopt a dualistic distinction path to differentiate between pure gratuitous gifts and identity-based gifts between spouses according to the specific facts of the case. In judicial adjudication, a unified subjective-objective standard should be established. Based on the parties' true intentions, judges should comprehensively consider factors such as the duration of marriage, the source of the real estate, and the family contributions of both parties to avoid mechanical application of ordinary gift rules. Judges should also conduct multi-dimensional balancing and flexibly apply the principle of fairness and justice to safeguard the interest balance between spouses. In terms of real right effect, the principle of distinguishing internal and external relations shall be upheld: internally, the true agreement of both parties shall be taken as the basis to protect reliance and dedication within marriage; externally, real estate registration shall serve as the publicity requirement to protect the property security of transaction counterparts. Meanwhile, supporting publicity mechanisms should be improved to enhance the external identifiability of spousal property agreements. In terms of creditor's rights application, the donor's right of arbitrary revocation should be strictly restricted, the application of the principle of good faith strengthened, the applicable scenarios of the right of statutory revocation clarified, and the doctrine of change of circumstances introduced to address interest imbalance caused by the loss of marital foundation. By coordinating the application of the Marriage and Family Book, the Contract Book, and the Real Rights Book of the Civil Code, and unifying the standards for nature identification and adjudication, the application conflicts between identity law and property law can be effectively bridged. While protecting individual property rights, the ethical value of marriage and family is highlighted, so as to achieve the coordinated unity of stable marital relations and secure market transactions.

**Keywords:** spousal property agreement; gift between spouses; revocation of gift; systematization of the Civil Code; legal application

## 1. Introduction

During the existence of the marital relationship, spouses often take real estate as an important carrier to stabilize their marriage, and donate the real estate under their name to each other through oral agreements or written contracts. However, once the spouses enter divorce proceedings, the ownership of the house usually becomes the focus of dispute between the two parties. Given the high value of real estate and its profound impact on family life, spouses tend to have intense disputes over property ownership.

When courts handle disputes arising from the transfer of housing between spouses, they often face a judicial dilemma: whether to give priority to family law rules that emphasize identity ethics, or to property law rules that focus on transaction security. This conflict originates from the inherent differences

in value orientation and institutional logic between the two legal systems. Current judicial interpretations mostly adopt a unitary approach in dealing with such disputes, which neither fully considers the diverse scenarios of spousal real estate gifts in practice nor takes into account the dual characteristics of internal identity attribute and external property publicity effect. Due to the mismatch between institutional supply and the complexity of real disputes, courts in different regions apply inconsistent standards, and the problem of divergent judgments in similar cases is prominent.

Obvious academic divergence also exists regarding the legal nature, validity determination and normative application of real estate gifts between spouses. Owing to the inadequate regulation of this field in current legislation, scholars have reached widely divergent judgments and conclusions on the same issues from different research perspectives. This paper intends to promote greater attention from both theoretical and practical circles to the nature identification of spousal real estate gifts, clarify the inherent connection between the spousal agreed property regime and the spousal gift system in China, accurately identify the root causes of conflicts in legal application between the two sets of rules, and propose targeted coordination approaches so as to provide directly referential judicial ideas for judicial practice. Drawing a clear legal boundary between spousal property regime agreements and spousal gift contracts can not only define the connotation and applicable scope of the two systems more accurately, but also provide judges with a more unified discretionary standard in hearing relevant cases.

## **2. Theoretical Definition and Nature Analysis of Real Estate Gifts Between Spouses**

### ***2.1. Definition of the Basic Category of Real Estate Gifts between Spouses***

China's current legal norms do not explicitly define real estate gifts between spouses, yet such property dispositions have been widely practiced in daily life and judicial cases, realizing the division and confirmation of property rights and interests between spouses through various legal documents. As one of the core civil legal acts regulating spousal property relations, gifts between spouses are distinctly different from ordinary property gifts in terms of subject identity, object attributes, behavioral motives, and forms of expression.

First, the subject of real estate gifts between spouses is limited to legally registered spouses, and a valid marital relationship constitutes the prerequisite for such agreements. The legal effect of spousal real estate gifts is closely bound to marital identity, showing obvious dependence on validity. Once the marriage is terminated, whether the previously effective gift agreement continues to be performed shall be re-determined according to the actual circumstances of divorce. Second, the object has core value particularity. As the subject matter of spousal real estate gifts, real estate is the most important fixed asset in family property, and changes in real estate ownership are directly related to the significant property rights and interests of both spouses. Third, the form of expression is both flexible and non-standard. Although China's current law does not mandate written form for real estate gifts between spouses, most parties choose to sign written agreements in practice. Due to a lack of professional legal knowledge, agreement titles are highly disorderly, which directly leads to frequent divergences in judicial identification of agreement nature. Fourth, the behavioral motive is dual in emotion and interest. Beyond directly adjusting housing ownership, most agreements imply the underlying pursuit of maintaining marital stability and balancing family power structure. Property arrangements conditional on emotional repair or relationship maintenance endow the agreements with richer ethical connotations.

From the perspective of distinction between related concepts, spousal agreed property regime is essentially different from legal property regime. The legal effect of the agreed property regime derives from the agreement of both parties and takes precedence over the legal property regime, while the legal property regime is directly prescribed by law and mandatory. Spousal agreed property regime and gift contracts belong to the systems of marriage and family law and obligation law respectively. A gift contract is an obligation agreement independent of specific identity, with registration as the requisite for the effect of real right change, and the donor enjoys the right of arbitrary revocation. Spousal agreed property regime is strongly personal, producing binding force internally in written form, and shall not be arbitrarily revoked in principle. The core difference between real estate gifts between spouses and ordinary civil gifts lies in that the former is based on marital relations, not purely gratuitous property transfer, but includes multiple ethical connotations such as consideration for housework, emotional maintenance, and marital security<sup>[1]</sup>.

## **2.2. Theoretical Disputes and Comments on the Nature of Real Estate Gifts between Spouses**

There have long been divergences between academic and judicial circles on the identification of the legal nature of real estate gifts between spouses, forming two core views: monism and dualism. Monism mainly includes three representative doctrines: the general gift doctrine, the special gift doctrine, and the spousal agreed property regime doctrine.

The general gift doctrine directly equates real estate gifts between spouses with ordinary civil gifts. In judicial practice, it mainly applies the rules of registration validity and arbitrary revocation strictly in accordance with Article 32 of the Judicial Interpretation (I) of the Civil Code on Marriage and Family. The advantage of this view is its concise and clear judicial logic, which exempts courts from substantive review of complex internal spousal relations. However, it has obvious defects: it completely ignores the ethical nature of marriage, excessively protects the property rights of donors, seriously damages the reasonable reliance interests of donees, tends to encourage utilitarian marriage trends, and deviates from the legislative purpose of marriage and family law<sup>[2]</sup>.

The special gift doctrine does not deny the nature of gift but defines it as “marriage-based conferral”, a special gift with identity attributes. In principle, it excludes the application of the right of arbitrary revocation and only allows the exercise of the right of statutory revocation or the application of the doctrine of change of circumstances. This view conforms to the essence of marital relations and family ethics but lacks clear support from current written laws in China. Judges can hardly directly invoke normative basis in adjudication, resulting in insufficient judicial operability<sup>[3]</sup>.

The spousal agreed property regime doctrine advocates incorporating real estate gifts between spouses into the regulation of Article 1065 of the Civil Code. A written agreement shall be binding on both parties upon conclusion, and the parties do not enjoy the right of arbitrary revocation. This view fully considers marital identity but confuses “specific property agreements for certain real estate” with “general property regime contracts for all property”, excessively expanding the scope of application of the spousal agreed property regime. Meanwhile, due to the lack of external publicity procedures, it is easy to harm the interests of bona fide third parties and market transaction security<sup>[4]</sup>.

All the above monist approaches have inherent defects: they either overemphasize property law logic or overstress identity ethics, fail to balance internal fairness between spouses and external transaction security, and can hardly address the complex and diverse circumstances in judicial practice.

## **2.3. Construction of a Dualistic Path for Identifying the Nature of Real Estate Gifts between Spouses**

The unitary identification approach cannot adapt to the practical needs of judicial practice. The scientific and feasible path is to adopt the dualistic distinction theory. According to the true intention of the parties, the core content of the agreement, and whether identity conditions are attached, real estate gifts between spouses are clearly divided into two types, with different legal rules applied respectively.

The first type is pure gratuitous gifts, which refer to gifts where one spouse clearly expresses the true intention of “gift” or “gratuitous conferral” without attaching any identity conditions such as marital survival, family obligation, or emotional compensation. Such gifts are legally identical to ordinary civil gifts. For such gifts, the relevant rules on gifts in the Contract Book of the Civil Code may apply, recognizing the principle of registration validity and the right of revocation within a reasonable scope<sup>[5]</sup>.

The second type is identity-dependent gifts, which refer to agreements on real estate ownership made between spouses for the purposes of marital survival, family mutual assistance, emotional maintenance, compensation for housework, or remedy for marital faults. The agreement does not explicitly use the term “gift”, or if used, is obviously based on marital cohabitation. For such gifts, the application of gift rules in the Contract Book should be excluded, and the relevant rules in the Marriage and Family Book of the Civil Code should apply instead. In principle, the exercise of the right of arbitrary revocation is strictly restricted or even completely excluded to strengthen protection of the donee’s reasonable reliance interests<sup>[6]</sup>.

The dualistic distinction path not only fully respects the autonomy of the parties’ will but also returns to the ethical essence of marriage and family. It can reasonably balance property law rules and identity law values, effectively resolve the dilemma of either-or identification, and provide a solid theoretical basis for unifying judicial adjudication standards.

### **3. Disputes and Causes of Real Estate Gifts Between Spouses**

#### ***3.1. Conflict of Normative System and Disorder of Legal Application***

The relevant legal norms concerning real estate gifts between spouses in China are scattered across the books and judicial interpretations of the Civil Code, with obvious value conflicts and logical contradictions between provisions, directly leading to disorder in legal application. First, core provisions are in direct applicable competition: Article 1065 of the Civil Code stipulates that spousal property agreements are binding on both parties, and the parties do not enjoy the right of arbitrary revocation; Article 32 of the Judicial Interpretation (I) of the Civil Code on Marriage and Family stipulates that real estate gifts between spouses may apply ordinary gift rules, and the donor has the right of arbitrary revocation before registration of real estate change. The two norms are opposite in effect, judges lack clear applicable order, and phenomena of different judgments in similar cases occur frequently. Second, judicial interpretations have logical flaws: Article 6 of the Former Judicial Interpretation (III) of the Marriage Law classified the transfer of one spouse's personal real estate to the other as an ordinary gift; Article 32 of the Judicial Interpretation (I) of the Civil Code on Marriage and Family added that "agreement for co-ownership" may also be revoked, forcibly degrading spousal property agreements to gift contracts, denying the independent regulatory value of marriage and family law and violating the systematic logic of civil law. Third, new rules have vague applicable standards: although Article 5 of the Judicial Interpretation (II) of the Civil Code on Marriage and Family introduced fair discretion, expressions such as "short duration of marriage" and "family contribution" are highly elastic, the judge's discretion lacks clear boundaries, and normative conflicts have not been fundamentally resolved.

Overlapping legal scope further aggravates application confusion. The normative boundaries between spousal property agreements and gift rules are unclear. For the same real estate ownership agreement, judges may choose to apply different provisions and reach completely opposite adjudication results. In addressing family property disputes, legislators lack systematic support from the theory of spousal property circulation, mechanically transplant property law rules, ignore the independent system and internal logic of marriage and family law, and ultimately cause normative conflicts and applicable competition.

#### ***3.2. Difficulties in Judicial Identification and Inconsistent Adjudication***

In judicial practice, there is no unified and operable standard for identifying the nature of real estate gifts between spouses, and courts often fall into the misunderstanding of mechanistic identification. Some courts conduct formal identification merely based on agreement title, property share proportion, and registration status, classifying "full transfer to the other" as gift and "retaining part of the share" as spousal property agreement. Distinguishing legal nature solely by share difference lacks any legal basis. Meanwhile, the appearance of spousal gift agreements is obviously disconnected from the true intention of the parties. Most gifts aim at marital stability and housework compensation but are not clearly reflected in the text, making it difficult for courts to accurately explore the true meaning of the parties.

Judicial adjudication generally tends to overemphasize identification while neglecting interest balancing. Most judges only focus on identifying the nature of the act, ignoring substantive factors such as duration of marriage, housework input, child support, source of housing investment, and degree of divorce fault. They adopt a one-size-fits-all approach of "revocable before registration, no relief after registration", resulting in serious infringement of the rights and interests of the party who contributes more to the family and significant imbalance in interest distribution between spouses. The existing relief and compensation mechanisms lack detailed rules, and the aggrieved party can hardly obtain reasonable property remedy after the judgment of revocation or non-revocation.

The appeal and retrial rates of such cases are close to 50%, and the second-instance modification rate exceeds 21%. The core reason is that superior and subordinate courts lack uniform adjudication standards for act identification, exercise of revocation right, and identification of real right effect, seriously affecting judicial credibility and authority.

#### ***3.3. Conflict of Real Right Effect and Absence of Publicity Mechanism***

Real estate gifts between spouses face a sharp conflict between internal and external effects in real right change, making it difficult to coordinate identity law rules and property law rules. From the internal spousal relationship, real estate agreements based on true intention should respect autonomy of will and

produce binding effect between both parties without registration. From the external transaction relationship, the Real Rights Book of the Civil Code adheres to the principle of registration validity and public trust, and no registration may not oppose bona fide third parties. China's current law does not clarify the priority of the two effects, putting judicial adjudication in a dilemma: protecting internal agreements may harm transaction security, while upholding registration publicity may undermine internal reliance and dedication in marriage.

More importantly, China has not yet established a special publicity system for real estate gifts between spouses. Most real estate agreements between spouses are private written agreements without external publicity effect, and external third parties cannot know the true ownership status of real estate through public channels. In practice, spouses may evade debts by backdating agreements or fabricating gifts, seriously threatening the legitimate rights and interests of creditors and bona fide purchasers. The institutional vacancy of the publicity mechanism is the root cause of internal-external conflict and inconsistency between right appearance and true right.

### ***3.4. Inadequate Regulation of Revocation Right and Poor System Coordination***

Imperfection of revocation rules is the most direct inducement for disputes over real estate gifts between spouses. The right of arbitrary revocation is at risk of abuse: the right of arbitrary revocation for ordinary gifts is directly applied between spouses, and donors often maliciously exercise the right of revocation around marital breakdown and divorce proceedings, ignoring the other party's years of housework, emotional dedication, and reasonable reliance, which obviously violates the principle of good faith and the ethics of marriage and family.

The applicable standards of the right of statutory revocation are vague. Core concepts such as "serious infringement on the donor", "scope of close relatives", and "statutory maintenance obligation" are undefined. Common marital faults such as infidelity, cold violence, and long-term failure to perform family obligations can hardly be included in statutory revocation circumstances, and the aggrieved party lacks effective relief channels. The doctrine of change of circumstances is absent in application. For gifts that have completed registration, even if the marital foundation is completely lost and the purpose of gift is totally frustrated, donors can hardly claim modification or restitution, and can only maintain the ownership status quo, resulting in serious imbalance of interests between both parties, which is inconsistent with the principle of fairness and justice.

The core root of the above dilemmas lies in the failure to reconcile the value conflict between identity law and property law. Property law focuses on transaction security, formal rationality, and absolute protection of ownership; marriage and family law emphasizes ethical stability, substantive fairness, and protection of family community interests. Current rules simply apply property law logic, completely ignoring the identity and ethical connotations of marital relations, ultimately leading to systemic conflict, adjudication disorder, and interest imbalance<sup>[7]</sup>.

## **4. Proposals for Improving the Legal Application of Real Estate Gifts Between Spouses**

### ***4.1. Regulate Legal Interpretation and Define Application Boundaries***

To address current normative conflicts, the primary path is to conduct strict restrictive interpretation of existing provisions and clarify the applicable boundaries of norms. Restrictive interpretation shall be given to Article 32 of the Judicial Interpretation (I) of the Civil Code on Marriage and Family, clarifying that this provision only applies to pure gratuitous gifts, namely, where the party explicitly states "gratuitous gift" in writing without attaching any marriage- and family-related conditions. For identity-dependent gifts for maintaining marriage, compensating housework, or repairing emotions, the application of this article shall be excluded, and the donor shall not enjoy the right of arbitrary revocation. Meanwhile, it shall be strictly limited that gift shall not be presumed merely due to transfer of real estate rights; the only prerequisite for identification is a clear written expression of gift intention.

At the legislative level, the legislative model of spousal property agreements should be refined and improved. China should continue the independent creation model of spousal property regime and clarify that spousal property agreements include two types: first, general property regime contracts, which make overall arrangements for all pre- and post-marital property of spouses; second, specific property agreements, which concern ownership of certain real estate. Identity-dependent real estate gifts shall be incorporated into the regulation of specific property agreements, uniformly applying the rules of the

Marriage and Family Book. Written requirements shall be clarified, stating property ownership, purpose of conclusion, whether obligations are attached, etc., to improve the certainty and operability of legal norms<sup>[8]</sup>.

#### ***4.2. Unify Judicial Standards and Strengthen Multi-Dimensional Adjudication***

To resolve judicial chaos, a dual identification standard unifying subjective will and objective elements must be constructed, abandoning formal identification. Subjectively, the core is to explore the true purpose of the parties: gifts for long marital duration, saving marriage, compensating housework, supporting children, or remedying marital faults are presumed to be identity-dependent; those explicitly agreed as gratuitous, on the verge of marital breakdown, and without identity conditions are deemed pure gratuitous gifts. Objectively, the focus is to examine the source of housing, investment, registration status, and actual possession and use. For unregistered identity-dependent gifts, arbitrary revocation shall not be upheld; for registered pure gratuitous gifts, only the statutory right of revocation may be exercised according to law.

Judicial adjudication should shift from identification-centered to interest-balancing-centered, and fully introduce interest balancing and compensation mechanisms. The legal value of non-economic contributions such as housework, childcare, elderly support, and emotional companionship shall be recognized as implicit consideration for gifts. The degree of divorce fault shall be distinguished: if the donor has serious faults such as domestic violence, adultery, or bigamy, its right of revocation shall be strictly restricted or even deprived. Detailed compensation rules shall be established: if gift revocation is adjudged, the donee shall be compensated for reliance interests, residential interests, and discounted family contributions; if non-revocation is adjudged, the donor may claim reasonable compensation based on marriage duration and real estate appreciation. In handling internal–external right conflicts, bona fide third parties shall be prioritized, and internal spousal disputes shall be transformed into monetary compensation claims, balancing transaction security and basic spousal right to subsistence.

#### ***4.3. Improve Real Right Rules and Establish a Special Publicity System***

In terms of real right effect, a clear rule of “distinction between internal and external relations” shall be established: internally, the true agreement of both spouses is the core, and a written agreement shall produce real right change internally without registration as a prerequisite, protecting reliance interests and housework dedication in marriage and excluding the right of arbitrary revocation; externally, real estate registration is the requirement for publicity, and no registration may not oppose bona fide third parties, adhering to the principle of public trust to protect the legitimate rights and interests of creditors and transaction counterparts. Meanwhile, it shall be clarified that Article 1065 of the Civil Code, as a special provision in the Marriage and Family Book, takes precedence over Article 209 of the Real Rights Book in internal spousal relations, fundamentally resolving provision conflicts.

At the institutional level, a special publicity mechanism for real estate gifts between spouses shall be established. Drawing on the experience of French notarization system, a dual publicity model of “notarization + family registration” shall be implemented. Real estate gift agreements between spouses shall be notarized to verify the authenticity, voluntariness, and legality of intention. A column for “record of spousal property agreements” shall be set up in real estate registration centers to register and publicize notarized agreements for public inquiry. Notarized and registered agreements shall have the effect against third parties; unpublicized agreements shall only be valid between spouses and may not oppose external bona fide obligees. This mechanism can stabilize internal spousal rights, protect transaction security, and eliminate right conflicts and moral risks institutionally.

#### ***4.4. Regulate the Exercise of Revocation Right and Promote System Coordination***

The right of arbitrary revocation shall be strictly restricted. Drawing on the principle of estoppel in American law, protection of reliance interests shall be strengthened. If the donee makes major life changes based on the gift promise, such as giving up career development, investing personal property, raising children, or undertaking all housework for a long time, constituting reasonable reliance, the donor shall in no case exercise the right of arbitrary revocation. Meanwhile, it shall be clarified that gifts for maintaining marriage, family mutual assistance, and emotional compensation are gifts of moral obligation as stipulated in Article 658 of the Civil Code and shall not be revoked according to law<sup>[9]</sup>.

The applicable rules of the right of statutory revocation shall be clarified. Combining with the

characteristics of marriage and family, and referring to the divorce fault circumstances in Article 1091 of the Civil Code, applicable scenarios shall be refined: the donee refuses to perform statutory maintenance obligations such as economic support, life care, and spiritual consolation; commits domestic violence, maltreatment, or abandonment, seriously infringing upon the legitimate rights of the donor or its close relatives; or commits bigamy, cohabitation with others, or other serious breaches of loyalty, leading to total frustration of the gift purpose. The judicial identification standards for “close relatives” and “serious infringement” shall be unified to improve the predictability and uniformity of adjudication.

The doctrine of change of circumstances shall be introduced to connect with the German system of obstacles to the basis of legal transactions. It shall be clarified that real estate gifts between spouses are based on “long-term stable marital cohabitation”. If the marriage breaks down and cohabitation cannot continue due to reasons not attributable to either party, it constitutes a change of circumstances. For registered gifts, courts may adjudicate adjustment of ownership shares, discounted compensation, or appropriate restitution by comprehensively considering duration of marriage, family contribution, real estate value, and economic status of both parties. Meanwhile, it shall be clarified that donors who file for divorce and are mainly at fault for marriage breakdown shall not abuse the doctrine of change of circumstances to effectively prevent moral hazards<sup>[10]</sup>.

## 5. Conclusion

Real estate gifts between spouses are a typical legal issue deeply interwoven with identity ethics and property rules. The core of their legal application lies in balancing the triple values of individual property freedom, marital and family stability, and market transaction security. China’s current legislation does not provide special and systematic regulation for such acts. Due to conflicts of normative system, vague nature identification, absence of publicity mechanism, and inadequate regulation of revocation right, judicial practice has long been trapped in chaos and substantive injustice. The fundamental path to solve this dilemma lies in: theoretically abandoning the unitary identification approach, establishing a dualistic framework to clearly distinguish pure gratuitous gifts from identity-dependent gifts; legislatively realizing the coordinated connection of the rules of the Civil Code through restrictive interpretation, improved publicity, and regulated revocation; and judicially adhering to the unified subjective–objective identification standard, strengthening multi-dimensional interest balancing, and taking into account both formal and substantive justice. By systematically improving the rules of legal application, the application conflicts between identity law and property law can be effectively bridged, the legitimate property rights of the parties protected, the ethical value of marriage and family highlighted, and ultimately the coordinated unity of stable marital relations, balanced interests of the parties, and secure market transactions achieved.

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