

Study on the Ability of Divorce Property Division Agreements to Defend against Enforcement Actions

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Abstract: Real estate constitutes a significant component of marital community property. When a couple agrees to divorce by mutual consent, they may stipulate that jointly-owned property registered under one spouse's name be transferred to the other. However, before the property ownership is formally updated in the registration records, creditors of the registered owner may apply for enforcement against the property. Can the designated recipient under the agreement resist such enforcement? Such cases frequently arise in judicial practice, yet significant controversy persists over whether the designated recipient's rights can preclude enforcement. Within legal academia, scholars remain divided on whether third parties in such scenarios may challenge enforcement actions. Even among those who affirm such objection rights, the underlying justifications vary. An analysis of representative cases reveals three key contentious issues: How to determine the nature and validity of divorce property division agreements; On what legal grounds can divorce property division agreements resist enforcement? The criteria for evaluating whether a divorce property division agreement can preclude enforcement.

Keywords: Divorce Property Division Agreement; Broadcasting Rights; Third-Party Enforcement Objection Lawsuit; Compulsory Enforcement; Effect of Property Right Transfer

1. Case Studies and Key Controversies on Resisting Enforcement via Divorce Property Division Agreements

1.1 *Fu v. Lü & Liu (Third-Party Enforcement Objection Lawsuit)*

Fu and Liu registered their divorce on October 29, 2007. Their divorce agreement stipulated that two marital properties—Apartment X at X Lane, Zhongshan Er Road, and the property at X Lane, Beicui Road—would be transferred to Fu's ownership. However, as the mortgage loans on these properties remained outstanding, and to defer transaction taxes and reduce transfer fees, the parties did not update the property registrations out of Liu's name. Subsequently, Liu became embroiled in an equity transfer dispute with Lü. Based on an effective civil judgment, Lü applied for enforcement, leading the court to seal the disputed properties. Upon learning of this, Fu filed an objection with the enforcement court. After the court dismissed the objection, Fu initiated a third-party enforcement objection lawsuit, claiming:

The disputed properties were acquired during Fu and Liu's marriage and thus constituted marital community property under the then-effective Marriage Law of the People's Republic of China. However, Article 9 of the repealed Property Law of the People's Republic of China unequivocally stated: "The creation, alteration, transfer, or termination of real property rights shall take legal effect only upon registration; absent registration, no legal effect shall arise." While the divorce agreement assigned the properties to Fu, this constituted Liu's disposition of his share in the co-owned properties. Crucially: Thus, the court rejected Fu's claims, upholding the enforcement measures.

1.2 *Determining the Nature and Validity of Divorce Property Division Agreements*

The ambiguity in current legal provisions regarding the nature of property division agreements in divorce is a major cause of divergent judicial practices. As an integral part of divorce agreements, property division agreements are addressed in Article 1076 of the Civil Code, which fails to clearly define their legal nature. While Article 1065 of the Civil Code establishes the marital property regime agreement, explicitly allowing spouses to determine the ownership of marital and premarital property with direct real rights effects, some courts regard divorce property division agreements similarly as spousal arrangements concerning joint property. These courts consider such agreements to constitute marital property regime contracts capable of directly effectuating real rights changes, thereby vesting ownership

in the designated party and inherently creating enforceability defense. This perspective was reflected in the first-instance judgment of *Zhong v. Wang & Lin* (third-party enforcement objection dispute) and more prominently demonstrated in Zang's enforcement objection case. However, other courts maintain the opposite view, noting that Article 1065 appears in Chapter III ("Family Relations") rather than Chapter IV ("Divorce") of the Marriage and Family Section of the Civil Code. Through literal and systematic interpretation, they conclude that this provision only applies to confirming property ownership during marriage and does not extend to post-divorce property division. Therefore, when determining whether divorce agreements can directly effectuate real rights changes, Article 1065 should not be considered an exception to Article 209. This fundamental ambiguity in legal characterization has directly resulted in inconsistent rulings for similar cases in judicial practice.

1.3 The Theoretical Foundation for Precluding Enforcement via Divorce Property Division Agreements Remains Ambiguous

Courts adhering to the "real rights effect theory" unanimously affirm that divorce property division agreements can preclude enforcement actions, as the property rights acquired by the designated owner through such agreements take precedence over monetary creditors' claims. However, courts adopting the "obligatory rights effect theory" remain deeply divided on this issue, primarily splitting into two opposing views. One camp maintains that divorce property agreements cannot exclude enforcement, arguing that since the transfer of property rights by the registered owner remains legally ineffective without formal registration, the designated owner's claim for registration modification holds no priority over monetary creditors' claims and thus cannot block enforcement. The contrasting view holds that such agreements should prevail against ordinary monetary claims in enforcement proceedings, contending that while claims generally enjoy equal status, the designated owner's registration claim possesses inherent priority over common monetary claims due to its substantive connection to the specific property in dispute. This fundamental theoretical divergence continues to fuel inconsistent judicial outcomes in enforcement objection cases.

2. How Can Divorce Property Division Agreements Preclude Enforcement

2.1 On Whether Property Agreements in Divorce Settlements Can Preclude Enforcement

At its core, this debate involves balancing two competing legal principles: the contractual autonomy of divorcing spouses versus the protection of creditors' legitimate interests. Courts have developed divergent approaches to this issue. Some jurisdictions recognize such agreements as having real right effects, automatically precluding enforcement when the designated owner's claim is characterized as a full property right. When classified as an "expectancy of real right", most courts still permit enforcement exclusion. However, when treated as merely a "priority creditor's right", the justification for blocking enforcement requires deeper analysis. Regarding this "priority creditor's right" theory, two predominant judicial standards have emerged from Supreme People's Court precedents: (1) the *Zhong Yongyu* case standard examining four elements - timing of debt creation, specificity of right, nature of claim, and origin of obligation; and (2) the *Liu Huiyan* case standard incorporating additional factors including the designated owner's fault, timing of interest formation, and comparative impact on interested parties.

While lower courts generally reference these standards, significant variations persist. For instance, regarding the critical timing element: the *Zhong* case required the third-party's claim to predate the enforcement debt's creation, yet some courts (e.g., *Li Fengzhen v. Zhou Guojun*) find claims merely antedating property seizure sufficient. Similarly, on the fault assessment: most courts excuse non-registration due to outstanding mortgages as non-culpable, while others (e.g., *Li Manni v. Liang Zhulin*) maintain parties could have resolved such obstacles through mortgage transfers or prepayment arrangements.

This jurisprudence inconsistency reflects fundamental tensions between property law formalism (emphasizing registration) and equity considerations (protecting vulnerable divorcees), with outcomes often turning on individual judges' weighing of: (a) the spouse's justified reliance on divorce terms versus (b) creditors' legitimate expectations about asset encumbrances. The lack of legislative clarity continues to produce unpredictable results in enforcement objection litigation.

2.2 The provision does not constitute a gift under contract law

In the context of divorce by mutual agreement, when spouses stipulate that jointly owned property registered under one party's name shall be transferred to the other, this constitutes a relinquishment of ownership rights by one spouse. While superficially resembling a gift due to its gratuitous nature - leading some scholars to advocate the "gift theory" characterization - this interpretation remains contentious. Early scholarship on the "gift theory" primarily examined the grantor's revocation rights, specifically whether property transfer commitments in divorce agreements could be revoked after the divorce takes effect but before actual property transfer occurs. This theory bifurcates into two perspectives: revocable ordinary gifts versus irrevocable special gifts. The ordinary gift view maintains that such property transfers constitute contractual gifts subject to Civil Code provisions, particularly Article 658 which permits revocation before title transfer unless involving public welfare or moral obligations. Proponents argue that since the Civil Code grants this revocation right, its exercise - though potentially constituting bad faith - should not be restricted given the gift's gratuitous nature and absence of recipient detriment absent reliance interests. Conversely, the special gift perspective emphasizes the unique nature of divorce agreements as hybrid instruments combining personal status and property arrangements, often involving reciprocal commitments that transcend ordinary gift principles. Judicial practice has increasingly recognized that such property divisions frequently form part of comprehensive settlement packages involving quid pro quo exchanges, thereby distinguishing them from simple do native transfers. This evolving understanding has led many courts to reject mechanical application of gift law principles, instead evaluating these provisions within the broader context of marital dissolution and the parties' interdependent obligations. The debate reflects deeper tensions between formalist contract law approaches and the equitable considerations inherent in family law disputes, with contemporary jurisprudence gradually favoring the latter through recognition of the distinctive nature of marital property arrangements.

Article 1065 of the Civil Code serves as the cornerstone of China's marital property system. The provision explicitly states:

"A man and a woman may enter into an agreement specifying that property acquired during their marriage as well as pre-marital property shall be owned separately, jointly, or partially separately and partially jointly."

This article establishes the legal framework for contractual arrangements between spouses regarding property ownership, recognizing three fundamental models: separate property, community property, and a hybrid system combining both approaches. The provision's significance lies in its affirmation of spousal autonomy in determining property relations while operating within the broader structure of China's civil law system.^[1]

2.3 It should not be characterized as a divorce property settlement agreement

Some scholars argue that the marital relationship in the context of divorce can be interpreted as a continuing contract under identity law. By drawing on the concept of contractual termination consequences and considering the divorce agreement holistically, the property disposition clauses are structurally interconnected with other provisions, falling within the scope of a "divorce property settlement agreement" that should be comprehensively evaluated within the post-dissolution framework. Under the relationship theory in contract termination, it is posited that termination does not extinguish the contractual relationship but rather modifies the content of the obligations, transforming them into a "relationship." Within this framework, the original performance obligations under the contract become restitution obligations, while ancillary claims such as liquidated damages, compensation for losses, or deposits constitute components of the relationship as modified or extended obligations.

However, the question remains whether it is appropriate to analyze property-related conduct in marital relationships solely through the lens of contract law. "When two individuals form a family through marriage, the household becomes a shared living unit based on personal coexistence. The resulting marital and familial relationship is not merely a generic property-based legal relationship but rather a social bond integrating emotions, morality, ethics, spirituality, and legal effects." This distinctive nature calls for a more nuanced analytical approach that transcends conventional contract law principles.

3. Analysis of the Nature and Legal Effect of Divorce Property Division Agreements

3.1 The Effect of Property Right Transfer in Divorce Property Division Agreements

In However, this view is debatable. A more convincing argument holds that property rights transfers under divorce agreements should be classified as juristic-act-based transfers for the following reasons:

First, juristic acts are designed to allow individuals to autonomously establish, modify, or terminate legal relationships through intent. The property division clause in a divorce agreement reflects the spouses' mutual intent to alter property ownership, meaning the real cause of the transfer is their agreement, not the dissolution of marriage itself. The opposing view—that the termination of marriage alone triggers the transfer—contradicts the principle of party autonomy, as it disregards the consensual nature of the agreement.

Second, the reason why non-juristic-act-based transfers do not require registration is that they either (1) derive from legal provisions (e.g., inheritance) or (2) involve state intervention (e.g., government expropriation). In such cases, the transfer is either legally predetermined or backed by public authority, eliminating the need for registration to ensure transaction security. Divorce agreements, however, lack such strong publicity. While marriage itself has some degree of publicity, it is far weaker than that of court judgments or administrative orders. Unlike inheritance—where property automatically vests in heirs upon death—divorce agreements require express consent to override the default marital property regime. Absent such consent, statutory property rules apply. Thus, classifying divorce-related property transfers as non-juristic-act-based is unreasonable.

Therefore, the transfer of property rights under divorce agreements should be treated as a juristic-act-based transfer, requiring compliance with registration formalities under the Civil Code (Art. 209). This approach better aligns with the principles of party autonomy, legal certainty, and transaction security. While some exceptional cases may warrant flexibility (e.g., where registration is obstructed by external factors), the default rule should remain rooted in obligation formalism, ensuring consistency with China's property law framework.

3.2 The Choice of Conceptualism Model in Property Rights Transfers

The publicity principle, a fundamental doctrine established in the Property Rights Section of the Civil Code, governs all types of property rights transfers arising from juristic acts. Under this principle, the transfer of movable property requires delivery as its publicity method, while the transfer of immovable property requires registration.

Matrimonial property agreements, by their nature as juristic acts, should theoretically follow the general rules of property rights transfers based on juristic acts. However, such agreements are inherently tied to marital status relationships and reflect the demands of shared spousal life. Consequently, applying the general obligation formalism model of property transfer would conflict with their essential ethical attributes.

Marriage law regulates not only personal relationships between spouses but also their proprietary relationships, serving to maintain marital stability and fulfill family functions. As a special law governing spousal property relations, marriage law should take precedence over property law in legal application. While contract law and property law emphasize fairness in economic transactions and individualism, marriage and family law prioritizes familial collectivism. This distinction necessitates a differentiated approach to property transfers within marriage, recognizing that strict adherence to general property transfer rules may undermine the unique social and ethical foundations of marital property arrangements.

The tension between these legal domains reflects a deeper jurisprudence question: whether the conventional publicity requirements should yield when they conflict with the protective purposes of family law. This is particularly salient in divorce property division agreements, where immediate enforcement of property transfers based solely on spousal consensus (without registration) may be justified by the need to preserve family equities, provided such arrangements do not prejudice third-party interests. The evolving jurisprudence suggests an increasing recognition of this balance in Chinese courts. Given the ethical particularities of marriage and family law, spousal property agreements (including those concluded during divorce) should not be subject to the general rules of contract law or property law. While Article 209(1) of the Civil Code adheres to the principle of obligation formalism, it also provides an exception for conceptualism, whereby property rights may be transferred by mere agreement between the parties, though such transfers cannot be asserted against third parties without

registration. This creates an institutional basis for applying conceptualism to matrimonial property agreements. However, the question remains: how can such agreements be accommodated under the exception clause of Article 209(1)? Property ownership is generally subject to the publicity principle, but the Marriage and Family Section of the Civil Code does not impose this requirement. For instance, Article 1062 establishes the statutory community property regime, under which marital property is recognized as jointly owned without any publicity formality. Property acquired during marriage is presumed to be jointly owned under Article 1062, irrespective of the publicity principle in the Property Rights Section. Furthermore, Article 1065(2) stipulates that spousal property agreements have "legal binding force" between the parties, meaning neither spouse may arbitrarily revoke or repudiate the agreement. Thus, absent an express donation intent, such agreements cannot be construed as gifts subject to revocation under Article 658(1) of the Contract Section. The "binding force" under Article 1065 encompasses not only obligatory effects but also proprietary consequences, as the primary purpose of these agreements is to determine ownership.

The binding effect of spousal property agreements is irrevocable, and their proprietary consequences arise by mutual consent rather than through the publicity principle under Article 209. Therefore, Article 1065 qualifies as an exception under the "unless otherwise provided by law" clause in Article 209. This interpretation is supported by judicial precedent, such as *Zhang v. Ye & Yuan* (Third-Party Enforcement Objection Lawsuit), where the court held that the former Marriage Law Article 19 constituted an exception to the former Property Law Article 9. Since matrimonial property agreements can effectuate property transfers between spouses while remaining unenforceable against third parties without registration, they achieve the dual objectives of internal ownership determination and third-party protection. Thus, conceptualism is perfectly compatible with the nature of spousal property agreements, balancing spousal autonomy with transaction security.

Scholars advocating the "gift theory" posit that when spouses allocate jointly owned property in divorce agreements, designating co-owned real estate as the sole property of one party constitutes a gratuitous transfer, aligning with the essential characteristics of a gift contract and thus qualifying as a "gift" in nature. Academic discourse in China has primarily focused on whether the grantor may exercise the right of arbitrary revocation after the divorce agreement takes legal effect but before the actual transfer of property rights.

Proponents of the guarantor's right of arbitrary revocation argue that spousal property transfers exhibit the features of ordinary gifts, rendering them revocable at any time before the transfer is completed, as stipulated under general gift rules. Conversely, opponents of this view contend that gratuitous transfers in divorce property agreements constitute special conditional gifts imbued with moral obligations. This perspective maintains that such agreements represent purpose-driven gifts between parties in a specific status relationship, carrying inherent moral duties and forming part of a binding pact. Once divorce is finalized, the purpose of the gift is deemed fulfilled, precluding arbitrary revocation.

4. Conclusion

Current international scholarship on this issue primarily examines the nature and legal effects of divorce property division agreements. German and French scholars generally characterize divorce agreements as property settlement agreements that are fundamentally distinct from marital property regime contracts, holding that such agreements create only obligatory rights between spouses without effectuating real rights transfers. In Japan, while academic theories diverge between the liquidation relationship doctrine, alimony doctrine, and moral damages theory regarding the nature of divorce property provisions, judicial practice predominantly adopts the liquidation relationship approach, treating these agreements essentially as settlements of joint marital assets.

Regarding enforceability against third-party creditors, German legal scholarship generally maintains that only rights with real character can block enforcement, whereas ordinary creditor claims typically cannot preclude compulsory execution, though some scholars argue for case-by-case balancing of competing rights where exceptional circumstances may allow obligatory claims to prevail. Japanese jurisprudence recognizes creditor claims as valid grounds for third-party objections, with the determinative factor being the degree of harm the enforcement would cause to the objecting party and whether such harm must be tolerated.

In common law systems like the U.S. and U.K., where divorce requires judicial adjudication, property settlements incorporated into court judgments are treated as binding contracts, with property transfers deemed effective upon judgment issuance regardless of registration status. When registration delays

occur and awarded properties face subsequent seizure due to the other spouse's debts, courts typically uphold the awardee's ownership, viewing registration as declaratory rather than constitutive. These comparative perspectives offer valuable reference points for China's ongoing development of divorce property agreement jurisprudence. Under China's current legal system, juristic acts of real right independent of obligatory acts are not recognized. Therefore, the view that marital property agreements constitute real right contracts is incompatible with China's theory of juristic acts.

Status acts are legal acts aimed at altering personal status. While they may effect changes in personal status rights, they cannot bring about real right changes. The property act theory, on the other hand, acknowledges that "marital property agreements regulate the property relationship between spouses" but overlooks the fact that purely property acts can only produce effects under property law, not under status law.

Given this, the compromise theory appears more tenable. Although marital property agreements are ancillary to the spousal relationship, their content—governing the ownership, possession, use, benefit, and disposition of property between spouses, as well as the liquidation and distribution of assets upon the termination of the marriage—clearly exhibits proprietary characteristics.^[2]

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