

A Study on the Identification of the Nature and Rules of Property Division of Parents' Capital Contribution to House Purchase for Married Children

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Abstract

With the skyrocketing housing prices, adult children generally cannot afford to buy a house on their own. It has become a social norm for parents to fund house purchases for their married children. However, influenced by traditional family ethics, parents and children seldom make detailed agreements on such contributions. This gives rise to disputes over property division when the children get divorced. The core questions include whether such contributions constitute gifts or loans, how to allocate the burden of proof, and the nature of the debt if the contribution is deemed a loan. Since China's laws do not provide explicit provisions defining the nature of this conduct, a one-size-fits-all approach should be avoided. Courts shall adjudicate cases based on specific facts, fully respect parents' true intentions, and strictly apply the principle of "he who asserts must prove" to allocate the burden of proof.

Keywords

Parents' capital contribution to house purchase for married children; property division upon divorce; gift; loan.

1. Introduction

With the surge in housing prices in recent years, most young people today cannot afford to purchase a house on their own. Consequently, seeking assistance from parents, namely parents funding house purchases for their married children, has become a social norm. However, due to the reserved and introverted personality traits of most Chinese people and the mindset that parents usually support their children without expecting repayment, parents seldom make explicit agreements regarding such contributions at the time of funding. This gives rise to a series of property division disputes when the children divorce. Is the parents' capital contribution a gift or a loan? How should the burden of proof be allocated? If the contribution is identified as a loan, is such debt a marital joint debt or the personal debt of one child? These are the controversies concerning parents' capital contribution to house purchases for married children in both academic and practical circles, and they constitute the main discussion points of this paper.

2. Legal Evolution

2.1. Before the Implementation of the Civil Code

The provisions concerning parents' capital contribution to house purchases for married children first appeared in Article 22 of the Judicial Interpretation (II) of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law, which took effect in 2004. Taking the time point before and after the child's marriage, this article distinguishes whether such contribution constitutes a gift to the child individually or to the married couple in the absence of explicit agreements. Later, Article 7 of the Judicial Interpretation (III) of the

Supreme People's Court on Several Issues Concerning the Application of the Marriage Law, which came into force in 2011, stipulated different scenarios of contribution by one parent and contributions by both sets of parents. Where one party's parents fund the purchase and the property right is registered under their child's name, the contribution shall be deemed a gift to their own child. If both sets of parents jointly contribute to the purchase, the parties may follow their agreement; absent an agreement, the property shall be treated as tenancy in common. This provision directly linked real estate registration with the ownership of the contributed funds for the first time.

2.2. After the Implementation of the Civil Code.

The Civil Code of the People's Republic of China (hereinafter referred to as the *Civil Code*), implemented in 2021, absorbed, refined and revised the provisions of the former Marriage Law. Its legislative spirit is in the same vein as the former Marriage Law and inherits its basic principles, enabling the internal system of the *Civil Code* to be complete and unified, and truly realizing the transition from the Marriage Law to the Marriage and Family Book of the *Civil Code*. There are two main judicial interpretations governing rules on parents' financial support for children's house purchases. Article 29 of the Judicial Interpretation (I) of the Supreme People's Court on the Application of the Marriage and Family Book of the Civil Code (hereinafter referred to as the *Judicial Interpretation I on Marriage and Family Book*) specifies the donee of the contribution based on whether the contribution is made before or after the parties' marriage. The parties shall abide by their agreement; if there is no agreement or the agreement is unclear, the matter shall be handled in accordance with the principle set forth in Item (4), Paragraph 1, Article 1062 of the *Civil Code*, namely "property acquired by spouses through inheritance or gift during the existence of the marriage relationship shall be marital joint property, except where a will or gift contract explicitly stipulates that the property belongs only to one party". Article 8 of the latest Judicial Interpretation (II) of the Supreme People's Court on the Application of the Marriage and Family Book of the Civil Code (hereinafter referred to as the *Judicial Interpretation II on Marriage and Family Book*), which entered into force in February 2025, differentiates scenarios where one party's parents make full contributions and where both sets of parents make joint contributions. It also requires courts to comprehensively consider various factors including the couple's shared life, childbearing circumstances, fault in divorce, and the extent of contributions to the family, so as to determine the property division plan and subsequent compensation scheme involving the contributed funds.

As can be seen from the above legal provisions, Chinese law does not specifically define the legal nature of parents' capital contribution to house purchases for married children. It only sets out rules for property division where the contribution is identified as a gift. The legal regime prioritizes respect for party autonomy: parties shall follow their agreement. In the absence of an agreement or where the agreement is unclear, cases shall be disposed of based on specific factual circumstances and relevant laws.

3. Theoretical Doctrines on Defining the Nature of Parents' Capital Contribution

The determination of the nature of parents' capital contribution has long been a controversial focus in both academic and practical circles. At present, there are mainly two doctrines concerning the characterization of such conduct, namely the "Temporary Loan Doctrine" and the "Kinship Gift Doctrine".

3.1. Temporary Loan Doctrine

Scholars advocating the Temporary Loan Doctrine hold that where the intention behind parents' capital contribution for their married children's house purchase is unclear, the legal nature of such contribution should be presumed to be a loan. Parents shall have the claim for repayment of the contributed funds against their child and the child's spouse, who bear the obligation to repay the funds to the contributing parents. The arguments are mainly elaborated from two perspectives: protection of parents' rights and interests and value orientation.

3.1.1. Protection of parents' rights and interests

First of all, parents have no obligation to provide free financial support for their adult married children. Most parents are willing to fund their children's home purchase out of intergenerational heritage and the expectation that their children will support them in old age. However, this does not mean that parents are duty-bound to finance adult children's house purchases without compensation. Secondly, the funds required to buy a house are substantial, often representing parents' life-long savings. Some parents even borrow money from others and incur heavy debts to help their children buy a house. If such parental contribution is deemed a gift, parents' rights and interests cannot be safeguarded. Meanwhile, flash marriages and quick divorces are common in contemporary society. If the contribution is characterized as a gift, the spouse may obtain half of the property free of charge upon divorce, resulting in the loss of half of the parents' investment and impairing parents' legitimate interests. Therefore, characterizing the contribution as a loan imposes repayment obligations on the child and the spouse, which can better protect parents' rights and interests.

3.1.2. Value orientation

Scholars supporting the Temporary Loan Doctrine argue that classifying parents' capital contribution as a gift may easily foster unhealthy tendencies among young people, such as getting something for nothing and relying on their parents financially. Laws and judicial interpretations should encourage children and their spouses to be self-reliant and work diligently to build a good living environment for themselves and their offspring. Defining parents' contribution as a loan helps promote a positive, self-motivated attitude among young people, facilitates the formation of sound values and boosts social development.

3.2. Kinship Gift Doctrine

Scholars advocating the Kinship Gift Doctrine argue that parents' capital contribution to house purchases for married children shall be presumed to be a gift in the absence of an agreement or where the agreement is ambiguous. The reasoning is mainly developed from three dimensions: application of law, traditional ethics, and the spouse's right to know.

3.2.1. Application of law

Proponents of the Kinship Gift Doctrine maintain that although existing laws and judicial interpretations concerning parents' funding of married children's house purchases do not explicitly define such conduct as either a gift or a loan, they only set out provisions for gifts. In light of the legislative intent, such contribution should be identified as a gift. For instance, Article 29 of the Judicial Interpretation (I) on the Marriage and Family Book governs parents' contributions for married children's home purchases based on the time point before and after marriage. It only stipulates rules for handling gifts when there is no agreement or the agreement is unclear. Article 8 of the Judicial Interpretation (II) on the Marriage and Family Book also contains provisions on parents' capital contribution to house purchases for married children, yet it likewise only addresses scenarios of gifts. Therefore, under current statutory provisions and judicial interpretations, the presumption of gift is more appropriate.

3.2.2. Traditional ethics

Since ancient times, Chinese people have attached great importance to family values. Parents generally support and care for their children without expecting returns. Accordingly, parents' financial support for children's home purchase cannot be simply classified as ordinary private lending, as it embodies traditional ethics. For one thing, parents are willing to fund house purchases because of kinship. They often offer financial support to ease their children's living burden without demanding repayment. For another, parents also hope to receive support from their children in their later years, rather than treating the contribution as a loan to be repaid. Hence, characterizing parents' contribution for children's home purchase as a gift is more consistent with China's traditional concepts.

3.2.3. The spouse's right to know

In judicial practice, parents often change their statements regarding the nature of the contribution depending on whether the marital relationship is harmonious or broken. When the couple gets along well, parents tend to claim the contribution is a gift to maintain family harmony and reduce their children's living pressure. But once the marriage breaks down, parents tend to side with their own child. To prevent the house purchased with their funds from being divided equally with the spouse as marital joint property, parents may collude with their child and sign a loan contract without the spouse's knowledge, asserting the contribution is a loan and demanding repayment from the child and spouse. Such conduct undoubtedly infringes upon the spouse's right to know. In academic and practical circles, where only one child signs the loan contract or IOU, courts will consider the signing time and the kinship between parents and that child. To protect the rights and interests of the child's spouse, courts are generally reluctant to recognize such documents as valid loans. Consequently, presuming parents' funding for children's home purchase as a gift conforms to adjudication practices in theory and judicial practice and can better protect the rights and interests of the child's spouse.

4. Controversies and Problems Existing in Judicial Practice

China's existing laws and relevant judicial interpretations contain provisions governing the scenario where parents contribute funds for their married children to purchase housing. Nevertheless, there are no clear provisions defining the legal nature of such conduct. Judges decide cases based on specific facts of individual disputes and their adjudicative experience, and may consider matters from different perspectives, leading to divergent judgments in comparable cases.

4.1. Whether the parents' capital contribution constitutes a gift or a loan

Influenced by Chinese people's reserved temperament and traditional values that emphasize family harmony, parents and their children tend to avoid "keeping detailed accounts" with each other. When parents fund property purchases for their married children, written agreements are rarely concluded, nor is there an explicit stipulation on the nature of such contributions. This results in ambiguous agreements and triggers debates over the characterization of such conduct in academic and practical circles.

Within academia, as mentioned above, scholars hold different views on the legal nature of this conduct based on different considerations. Scholars supporting the temporary loan theory, out of considerations for protecting parents' rights and interests and normative value orientation, argue that parents have no legal obligation to provide gratuitous financial support for adult children. To better encourage young people to maintain a positive attitude toward life and protect parents' property rights, such conduct should reasonably be deemed a loan. Scholars endorsing the family gift theory, from the perspective of existing legal provisions, traditional

ethics and the spouse's right to know, maintain that characterizing such contribution as a gift is more consistent with China's age-old family ethics and more conducive to family harmony.

In judicial practice, courts characterize parents' conduct of funding their children's property purchases differently according to the facts of each case. One scholar retrieved and analyzed relevant cases on parental housing contributions from 2014 to 2023 via China Judgements Online. Among the 171 valid judgments, there were 79 civil cases of first instance and 92 civil cases of second instance or retrial, with second-instance and retrial cases accounting for 54%. Of these cases, 74 characterized the conduct as a gift (43%), and 97 as a loan (57%), showing a ratio close to 4:6. In addition, the same scholar searched civil judgments over the recent three years on China Judgements Online using the keyword "parental housing contribution", retrieving 78 cases in total. After screening, 53 valid cases remained: 24 civil first-instance cases and 29 second-instance or retrial cases (55%). Among them, 18 cases recognized the contribution as a gift (34%), and 35 as a loan (66%). It can thus be concluded that disputes persist in judicial rulings regarding the nature of parental contributions, while the general trend leans toward characterization as a loan.

This paper holds that where parents and children have no agreement or an ambiguous agreement on the capital contribution, priority should be given to deeming it a loan. If the conduct is to be recognized as a gift, it shall generally be a gift made to one's own child. Where the gift is conferred on both spouses, it shall be a purpose-oriented or conditional gift. Its purpose and attached condition refer to "the continuance of the marital relationship". When the couple divorces, the purpose of the parental contribution fails to be achieved, which shall be deemed non-fulfillment of the condition, and the children shall be obligated to return the property. The reasons are as follows:

First, parents are not legally obligated to continue supporting their adult children. Second, residential property purchases involve substantial funds, which differ from gifts exchanged in daily interpersonal courtesies. Therefore, the recognition of a gift shall comply with Article 109 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised 2022): "Where the people's court is convinced that the existence of the fact to be proved is beyond reasonable doubt, it shall rule that such fact exists." In other words, to establish the existence of a gift, the standard of proof must reach beyond reasonable doubt; otherwise, the conduct shall not be identified as a gift but as a loan. This standard of proof is relatively high. In reality, few scenarios can satisfy the "beyond reasonable doubt" threshold, which explains why judges in most judicial cases characterize such conduct as a loan. Where the standard of beyond reasonable doubt is indeed met, the contribution may be recognized as a gift, which in that case shall be regarded as a gift to the donor's own child, better reflecting the original intention and true expression of will of parents funding housing purchases for their married children. If deemed a gift to both spouses, it shall also be a gift subject to certain purposes or conditions, namely the subsistence of the marriage. Upon divorce of the couple, the purpose of the parental contribution is not fulfilled, which shall be treated as non-occurrence of the condition, imposing on the children the obligation to return the contributed funds.

4.2. Divergences in the allocation of the burden of proof

Evidence plays a decisive role in case adjudication, which requires clear findings of facts and sufficient evidence. The allocation of the burden of proof directly affects the presentation of evidence in litigation, thereby impacting judicial outcomes and the rights and interests of both parties. Pursuant to Article 67 of the Civil Procedure Law of the People's Republic of China and Article 90 of the aforesaid Judicial Interpretation, the burden of proof generally follows the principle of "he who asserts must prove". Nevertheless, inversion of the burden of proof may occur due to the complexity of real-world cases.

In cases involving parental housing contributions for children, judges allocate the burden of proof differently. Some judges maintain that where parents claim the contribution constitutes a loan, under the principle of "he who asserts must prove", the parents shall produce evidence to prove the loan relationship, such as loan contracts or chat records explicitly confirming a loan. Failure to produce evidence or insufficient probative force shall result in the adverse consequence of bearing the burden of proof. Other judges argue that a gift is gratuitous and confers pure benefit on the recipient. Accordingly, the recipient shall bear a heavier burden of proof and provide evidence verifying the gift, such as gift contracts or chat records explicitly stating the gift. Failure to produce such evidence or insufficient probative force shall incur adverse consequences.

Take the case Zhou Lijun v. Yu Keqin (private lending dispute) as an example. The court of first instance assigned the burden of proof to Zhou Lijun, the spouse, requiring her to prove that the contribution was a gift. Since Zhou Lijun failed to provide such evidence, the contribution was identified as a loan and Zhou Lijun was ordered to repay the debt. After Zhou Lijun filed an appeal, the appellate court shifted the burden of proof to the parents. As the parents only submitted bank deposit slips without other evidence to substantiate the loan relationship, their evidence was insufficient. The appellate court therefore ruled that the contribution was a gift, reversed the first-instance judgment, and imposed the adverse consequence of insufficient proof on Yu Keqin.

It is evident that different allocations of the burden of proof expose parties to different risks of defeat, leading to inconsistent judgments in similar cases and contradictory rulings between first and second instances. This paper contends that the statutory principle of "he who asserts must prove" shall be observed. The recipient of a gift shall not be burdened with heavier proof duties merely because the gift brings pure benefits.

4.3. Whether the debt is joint marital debt or personal debt under a temporary loan

Where the parental housing contribution is characterized as a loan, especially when only one spouse signs the loan contract, disputes arise over whether the debt qualifies as joint marital debt or personal debt. Judges holding the joint-debt view argue that the funds were used to purchase a residence for the couple to live in, and both spouses enjoyed benefits from the property. Therefore, the debt shall be treated as joint marital debt, with both spouses obligated to repay the parents. Judges supporting the personal-debt view hold that the scope of spousal agency for household affairs covers only needs arising from daily family life. Housing purchase involves an enormous sum of money beyond the scope of such agency. Characterizing the debt as joint marital debt would infringe upon the other spouse's right to know. Accordingly, where only one spouse signs the loan contract, the debt shall be deemed the personal debt of the signing spouse, who alone shall be liable for repayment to the parents.

5. Application of Property Division Rules

As stated above, in cases where parents fund property purchases for their married children, the core dispute lies in the legal characterization of such contribution, which plays a decisive role in property division upon the children's divorce. Different characterizations lead to different applicable property division rules. Where the parental contribution is deemed a loan, the nature of the debt shall be clarified so as to apply corresponding property division rules. Where the contribution is identified as a gift, the recipient of the gift shall be confirmed for the application of relevant property division rules.

5.1. Determination of Debt Nature and Application of Property Division Rules under Loan Circumstances

Article 1064 of the Civil Code of the People's Republic of China sets forth provisions for the identification of joint marital debt, covering two main scenarios. First, debts incurred based on the joint expression of intent by both spouses, which includes both express and implied consent. Second, debts taken out in the name of one spouse alone but applied to the couple's shared marital life. Where parental funding for married children's housing purchase is characterized as a loan, how to distinguish whether such debt constitutes joint marital debt or personal debt? In judicial practice, one child together with their parents usually acknowledges the debt while the other spouse denies it. Therefore, whether the spouse is aware of the debt becomes the key factor for determining the nature of the debt. Two major scenarios are involved:

The first scenario is where both spouses have knowledge of the debt. That is, both spouses are aware of the source and purpose of the funds. If the parents state that the contribution is a temporary loan and neither spouse objects, it shall be deemed that both spouses have the joint intent to borrow. The loan shall be treated as joint marital debt, and both spouses bear the repayment obligation. For instance, an IOU signed by both spouses, or the spouse being present and raising no objection when the parents issue the IOU to their child, or subsequent expressions of repayment intent from the spouse, all constitute joint intent to incur debt. In such cases, the debt shall be joint marital debt, and both spouses shall be jointly liable for repayment to the parents.

The second scenario is where the other spouse has no knowledge of the debt. During the subsistence of a marriage, each spouse holds the spousal agency for household affairs. Debts arising from the exercise of such agency may still be recognized as joint marital debt even if the other spouse is unaware. Nevertheless, housing purchase involves a substantial amount of funds, which clearly falls outside household daily necessities such as food, clothing, accommodation, transportation, medical care and healthcare. Therefore, where the spouse has no knowledge of the loan, this paper argues that the debt shall not be characterized as joint marital debt, but the personal debt of the spouse who acknowledges the debt, and only that spouse shall undertake the repayment obligation to the parents.

5.2. Identification of Donee and Application of Property Division Rules under Gift Circumstances

Article 8 of the Judicial Interpretation (II) on the Marriage and Family Book of the Civil Code stipulates detailed provisions for property division in gift-related cases, covering full parental contribution, partial parental contribution, and joint contributions from both sets of parents. It prescribes different rules for property partition and corresponding compensation according to different circumstances. If a gift contract clearly specifies the donee, the matter shall be handled in accordance with the agreement. Where there is no agreement or the donee is not clearly specified, the property shall be disposed of based on the source and proportion of contributions, together with comprehensive consideration of factors such as cohabitation and childbirth.

5.2.1. Identification of Donee and Property Division Rules

Where parents and their children have a clear agreement on the donee of the gift, the case shall be disposed of in line with such agreement. In the absence of an agreement or with ambiguous terms, what factors shall be taken into account for identifying the donee and dividing property? This paper maintains that two major aspects shall be considered. First, fully respect the parents' intent and uphold the principle of party autonomy. As a core principle of civil law, party autonomy guides judicial adjudication. When parental housing contribution is found to be a gift, the gratuitous nature of a gift means the donee obtains benefits without paying consideration. Hence, full weight shall be given to the donor's declaration of will, the parents' true intention

shall be respected, and parents' right to dispose of their own property as contributors shall be safeguarded. Second, examine the specific facts of the contribution, including the source and proportion of the funds. Where one party's parents fully fund the property purchase for their child, such contribution may be recognized as a gift solely to their own child, and the court may rule that the house belongs to that child. Where parents make partial contributions or both sets of parents contribute jointly, the contributions shall be regarded as gifts made separately to their own children. When dividing the property, the court may award the house to one party, and order that party to pay reasonable compensation to the other party, by reference to the source and proportion of contributions, and comprehensive factors including marital cohabitation, birth of common children, fault in divorce, contribution to the family, and the market value of the house at the time of divorce. This set of rules for identifying the donee and dividing property can, on the one hand, better respect parents' intent and protect their property interests, and on the other hand, balance the interests of all parties. Due to blood ties and the expectation of old-age support from their children, parents generally hope their property shall be acquired exclusively by their own children rather than divided by a third party. Therefore, the division rule which allocates property by considering the source and proportion of contributions, cohabitation, childbirth and divorce fault, and requires the party retaining the property to compensate the other party, can balance the interests of all stakeholders.

5.2.2. Compensation Rules

Pursuant to Article 8 of the Judicial Interpretation (II) on the Marriage and Family Book of the Civil Code, the factors for compensation include the proportion of capital contribution, marital cohabitation and childbirth, divorce fault, contribution to the family, and the market price of the house at divorce. It is reasonable for the judicial interpretation to adopt these factors for property division. First, the proportion of contribution is considered because where there is a large disparity between the contributions of the two sets of parents, it is more reasonable to award the house to the party with the larger contribution, who shall make reasonable compensation to the other party with smaller investment according to specific circumstances. Second, "marital cohabitation and childbirth" is taken into account to reflect the length of married life and prevent half of the property from being divided merely due to flash marriage and quick divorce. Where the couple has common children, the principle of the best interests of the child shall be prioritized. It is more appropriate to award the house to the custodial parent, who shall compensate the other party as appropriate. Third, "divorce fault" and "contribution to the family" are inherent considerations in divorce property division. A party at fault for divorce may receive less property or lower compensation, while a party making greater contributions to the family deserves higher compensation. Finally, the factor of "market price of the house" is included because the party who does not obtain the property may need to purchase or rent a new residence afterwards, and housing prices at that time may differ from the original price. Therefore, the "market value of the house at the time of divorce" shall serve as one of the considerations for calculating compensation.

6. Conclusion

It has become a common social phenomenon for parents to finance property purchases for their married children. Influenced by China's traditional family ethics, most parents and their children do not reach an explicit agreement on the legal nature of such contributions, which inevitably gives rise to property division disputes when the children get divorced. Current Chinese law does not lay down clear provisions regarding the nature of such parental contributions, indicating a reserved legislative attitude rather than advocating a one-size-fits-all approach to characterize the contribution in every single case. This paper holds that judges shall fully respect the true expression of intent of all parties and abide by any valid agreement

between them. Where there is no agreement or the agreement is ambiguous, the genuine will of the contributing parents shall be duly respected, and priority shall be given to characterizing the contribution as a loan. Unless the children can produce evidence of a gift that sufficiently rules out the possibility of a loan, the contribution shall be deemed a loan, and the child couple shall bear the repayment obligation. If the evidence submitted by the children meets the beyond-reasonable-doubt standard, the contribution may be recognized as a gift, which shall be construed as a gift made by the parents to their own child. In accordance with Article 8 of the Judicial Interpretation (II) on the Marriage and Family Book of the Civil Code, the court shall adjudicate the case on the basis of evidence presented by both parties under the principle of "he who asserts must prove", comprehensively taking into account factors such as the source and proportion of contributions, cohabitation and joint child-rearing, divorce fault, and contributions to the family.

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