

# Determination of the Nature of the Contribution Made by the Parents to the Purchase of a House for Their Children after Marriage

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**Abstract:** Due to the high housing prices in China, it is common for parents to contribute to the purchase of houses for their children. However, if the couple's relationship changes after the marriage, disputes may arise regarding the ownership of the house purchased with the parents' capital. This can cause many difficulties in judicial practice. This paper examines the legal disputes surrounding the purchase of a house funded by parents after marriage and analyzes relevant legal provisions before and after the implementation of the Civil Code, summarizes the current legal recognition standard and its trend, and evaluates the strengths and weaknesses of each judgement. The determination of the nature of the purchase of a house financed by the parents after marriage shall be in accordance with the provisions of the existing laws, and in judicial practice, the determination of the purchase of a house financed by the parents after marriage shall be made with caution, shall not be "one-size-fits-all", and shall be aimed at balancing the interests of all parties to the fullest extent possible, so as to ensure that fairness and justice are ensured.

**Keywords:** Parental Contribution to the Purchase of a House; Matrimonial Community Property Regime; Lending Relationship; Gift Relationship

## 1. Introduction

With the intensification of urbanization in China, urban real estate prices have remained high for a long time. To provide better living and development conditions for their children, it has become a common phenomenon for parents to contribute to the purchase of real estate for their children after marriage.

However, when the children divorce, matrimonial property ownership and the nature of the purchase price disputes will arise. From the Judicial Interpretation of the Marriage Law (II) and (III) to the Civil Code era's Judicial Interpretation of the Marriage and Family Section of the Civil Code (I) (Hereinafter referred to as "Interpretation II", "Interpretation III", "Interpretation of the Marriage and Family Code I"), there are special provisions on this matter. However, there is still ongoing controversy surrounding this issue, which has caused significant concern among all parties involved. In academia and practice, there are different points of view regarding the issue of parental contributions. Some argue for the protection of parental rights and interests, suggesting that contributions should be considered as "loan". Others argue for the protection of the rights and interests of the parents, suggesting that contributions should be considered as "gifts". This paper will sort out the relevant laws and their judicial interpretations of the parents for the children's marriage of the provisions of the purchase of real estate, grasp the direction of the legislator for the treatment of this issue and the substance. Then from the judicial practice tendency to analyze the advantages and disadvantages of "loan" and "gift". Finally, this paper that for the marriage of parents for children to buy housing behavior should be in line with the provisions of the law, in the absence of an explicit agreement, should be recognized as a gift, in accordance with the relevant provisions of the civil code part of the marriage and family.

## 2. Evolution of the Legal Provisions Relating to the Contribution of Parents to the Purchase of a House for Their Children after Marriage

### **2.1. Article 22(2) of the Judicial Interpretation of the Marriage Law (II)**

According to Article 22, paragraph 2 of the “Interpretation II”, which came into force in 2004, if a parents contributes to the purchase of a house for their child after the child's marriage without explicitly indicating that it is a gift for one of the children, the contribution will be considered a gift for both the child and their spouse. This provision of the “Interpretation II” basically follows the provisions of Article 17(1)(4) and Article 18(1)(3) of the Marriage Law as amended in 2001, which stipulate that during marriage, property acquired by the husband and wife by gift is presumed to be the common property of the husband and wife, and that if “the contract of gift establishes that property belonging to only one of the husband or one of the husband or wife”, then it is the common property of the husband and wife. If “it is determined in the gift contract that the property belongs only to the husband or one of the spouses”, then it is the property of one of the spouses. As can be seen, article 22 of the “Interpretation II” recognizes the nature of the contribution made by parents to the purchase of a house for their children after marriage as a “gift” rather than a “loan” relationship.

However, in practice, when the couple's emotional breakdown resort to divorce, the parents of the capital for their children for the purpose of maximizing the division of property and other interests, to the children of both husband and wife to file a civil loan disputes, claiming that the capital for the borrowing, and with their children unilaterally issued a loan note to prove that the consensual borrowing relationship, ostensibly requesting both husband and wife to pay back the original contribution to the purchase of the house, in fact, in order to prevent the original contribution to become a husband and wife common property and their children's spouses to share, the original is a gift of contribution into lending behavior. In response to the judicial practice of this kind of debt forgery, false lawsuits, the supreme law in the “Interpretation III” in the marriage of the parents for the children to buy a house after the contribution to the issue of refinement of the provisions again.

### **2.2. Article 7 of the Judicial Interpretation of the Marriage Law (III)**

Article 7 of the “Interpretation III” provides for two scenarios on this issue. The first situation is the purchase of housing by one of the parents at the expense of the child and the registration of the title in the name of one of the contributing children, which is regarded as a gift to one of the contributing children, and the property is the personal property of one of the spouses. The second situation is the children of both parents jointly funded, and property rights registered in the name of one of the children, according to the share of both parents respectively to determine the share of the children's share of the real estate, that is, according to the share of the respective parents of the share of the contribution of the joint share. Unlike the “Interpretation II”, Article 22, paragraph 2, which presumes that “parents' contribution to the purchase of a house for their children” is a gift, Article 7 of the “Interpretation III” takes the state of registration of the property right of the house as a criterion for determining the parents' intention to grant the property right to one of the children or to both husband and wife and further stipulates the state of registration of the house as a criterion for determining the ownership of a house purchased<sup>[1]</sup>. The Supreme People's Court considered that linking the “subject of property rights registration” with the “contribution who explicitly expresses a gift” makes the real intention of parents to contribute to the purchase of a house for their children an external and objective basis for judgment, and also facilitates the making of a decision in accordance with the true meaning of the parties concerned, which is in line with the original intention of the parties concerned, and better reflects a balance of the overall interests of the parties.

However, the provisions of article 7 of the “Interpretation III” have been questioned by many academics. Some scholars have argued that the source of funds for the purchase of a house by a child is not necessarily related to the ownership of the property in rem, and that the theoretical basis for this provision lies in the application of the presumption of rights under the provisions of article 16 of the Property Law. However, this registration presumption is the presumption of the right

holder and the content of the right, not the presumption of the content of the meaning of the change of property rights, that is, the result of the change of property rights can not be deduced from the change of property rights of the content of the meaning of the change of property rights. Therefore, the presumption of the content of the parents' intention through the registration of the property right is clearly inconsistent with the theoretical basis of the Property Law. Apparently, the Supreme Court also realized the obvious inadequacy of this provision, and therefore deleted the link between the registration of the title and the intention to make a gift from article 29 of the "Interpretation of the Marriage and Family Code (I)".

### **2.3 Article 29 (2) of the Judicial Interpretation (1) of the Marriage and Family Section of the Civil Code.**

Article 22 (2) of the "Interpretation II" stipulates that "unless the parents expressly indicate that it is to be gifted to one of the spouses", which stipulates, in the form of a proviso, that parental contributions are to be gifted to one of the spouses as the personal property of one of the spouses. Article 29 of the "Interpretation of the Marriage and Family Code I" stipulates that if parents make contributions to the purchase of a house for their children after marriage, the attribution of the contributions shall be handled in accordance with the agreement made at the time of the contribution; if there is no agreement or if the agreement is not clear, the matter shall be dealt with in accordance with the rules for determining the joint property of the husband and the wife under the legal matrimonial property regime. The second paragraph of Article 29 of the "Interpretation of the Marriage and Family Code I" highlights the importance of the agreement that "parents make contributions to the purchase of a home for their children", enhances the awareness of the agreement that parents make contributions to the purchase of a home for their children, and reflects the respect for the true meaning of the parties involved. On the issue of parents' contribution to the purchase of a house for their children, the Civil Code is, in general, consistent with the Marriage Law, but re-expresses the second paragraph of Article 22 of the "Interpretation II", and deletes

Article 7 of the "Interpretation III", reflecting the legislator's intention of guiding the parties to agree in advance<sup>[2]</sup>.

### **3. Analysis of the Nature of the Contribution of Parents to the Purchase of Housing for Their Children after Marriage**

#### **3.1. Judicial Decisions on the Contribution of Parents to the Purchase of a House for Their Children after Marriage**

In judicial practice, for the marriage of parents for children to buy a house for the disputes mainly focus on: marriage of parents for children to buy a house for the behavior, whether it is a loan, or gift?

##### **(1) Gift theory**

According to Chinese tradition, most parents voluntarily contribute to the purchase of housing for their children, and it is more reasonable to recognize the contribution of parents as a gift<sup>[3]</sup>. If there is no agreement on the attributes of the contribution when the parents make the contribution or if there is no clear agreement on the attributes of the contribution, the contribution made by the parents for the purchase of a house for their children after marriage shall be recognized as a gift and the relevant provisions of the Marriage Law shall be applied.

In a civil loan dispute case (Beijing Third Intermediate People's Court (2022) Beijing 03 Civil Final No. 263 Civil Judgment of the Second Instance.), the Court of Second Instance held that the donor must bear the adverse legal consequences if he fails to provide evidence that his contribution was a loan, and that his claim that the spouse of the donor's child return the contribution to the house in question was not supported. The court of second instance gave the following reasons: Firstly, the determination of whether there is an intention to make a gift shall be based on the intention expressed at the time of the contribution. The time of the parents' expression of intent is the time of the capital contribution, and later claim that the loan relationship can not be supported in general. This is to prevent parents from violating the principle of honesty and good faith by claiming the return of the contribution based on the so-called loan relationship when the child's marriage changes or the relationship between the parents and the child deteriorates.

Secondly, as to whether the lending relationship is established, should follow the “who claims, who proves” principle. In real life, based on the special status relationship between parents and children, in the parents contribute to the general will not sign an agreement to explain the content and attributes of the contribution, therefore, for the parents for children to buy a house for the nature of the determination of the contribution is often the lack of external objective basis. At this point, should strictly implement the “who claim, who prove” principle, if the parents of its claim for the loan relationship is not sufficient evidence, can not be recognized that the contribution for the loan.

Third, the parent-child relationship determines the parent's contribution, the possibility of gift behavior is higher than lending behavior. And from this case, the parents have indicated that the contribution is for the improvement of the living conditions of the children after marriage, indicating that the parents are for the children's marital happiness for the contribution behavior, rather than later to get back the contribution.

#### (2) Loan theory

In the case of the parents for the children after marriage to buy a house contribution is not explicitly expressed as a gift, should be recognized in accordance with the law, “the parents of the contribution” to relieve the pressure of children's lives “temporary lending of funds”, that is, should be recognized that the contribution for the loan.

In a civil loan dispute civil retrial case (Shandong Province Weihai Economic and Technological Development Zone People's Court (2023) Lu 1092 Min Shen 6 retrial civil ruling.), the retrial court held that the provisions of Article 22(2) of the “Interpretation II”, which applies on the condition that the parents' contribution to the purchase of a house for the couple is a gift to whom, and does not address the issue of whether the money given by parents to their children in connection with the children's purchase of a house is a gift or a loan, could not be inferred from the provision, cannot be inferred from this provision as long as the parents pay the money to both spouses, it cannot be inferred from this provision that the transfer of money from the parents to the couple is a gift to the couple as long as the parents pay the couple and the couple uses the

money to purchase a home. In this case, the contributing parents had provided evidence of the transfer of funds to support his claim that the loan was a private loan. Acceptance of the contribution of the children to defend the contribution as a gift but failed to provide evidence to prove the fact of gift, only to parents for the children to buy a house, which must be recognized as a gift, does not meet the gift of the fact of proof of the standard, will bear the legal consequences of proof of the unfavorable.

### 3.2. Trends in Judicial Decisions on Disputes over Parents' Contributions to the Purchase of Housing for Their Children after Marriage

The author to “parents for children to buy a house contribution” as the key words, select “civil case” cause, to January 1, 2013 to December 1, 2023 as the period, in the north of the legal treasure platform for accurate full-text search, a total of 168 cases retrieval of judicial precedents A total of 168 judicial cases were searched, excluding 32 cases which are inconsistent with the research question of this paper, and the remaining 136 cases were carefully analyzed. Observe the judicial practice for the “marriage parents for children to contribute to the purchase of housing” nature of the determination, can be found, for the “marriage parents for children to purchase housing contribution” problem, the judicial decision from the past more will be the contribution recognized as a gift, to the current tendency to the parents of the capital characterized as a loan, showing a presumption of loan trend (e.g., table 1).

There are several factors that courts consider in determining the nature of a “parental contribution” loan:

First, the preponderance of evidence. According to the supreme people's court on the trial of private lending cases on the application of law provisions of article 16 of the standard of proof is to achieve the preponderance of evidence, for the establishment of the fact of loan and lending, the parents only need to provide the contribution of financial institutions transfer vouchers, and on the loan and lending of the consent of the reasonable explanation; and the child receiving the contribution to claim that the contribution is a gift defense, it is necessary to meet the

standard of proof beyond a reasonable doubt. At this point, the defendant can not prove that the parents clearly expressed the gift of evidence, the court will find that the loan relationship is established, the defendant shall bear the obligation to repay the loan.

Secondly, emphasis is placed on the protection of the interests of contributing parents. The view was expressed that the new trend in judicial practice regarding the characterization of this issue has been influenced by the fact that in recent years, China has entered an

ageing society, focusing on the protection of the rights and interests of the elderly [4].

Thirdly, parents' contribution to the purchase of a house for their children is a non-statutory obligation. From the point of view of public order and morality, parents do not have a legal obligation to support their children who have reached the age of majority. The financial assistance provided by parents to their adult children is based on emotional support and is not a statutory obligation [5].

**Tables 1. Judicial Practice on the Nature of the Contribution of Parents to the Purchase of a House for Their Children after Marriage**

Year of closure (years)	Total number of cases (cases)	Determination of the nature of the contribution made by the parents to the purchase of a house for their children after marriage	
		gift	loan
2013	1	1	0
2014	9	7	2
2015	2	2	0
2016	5	4	1
2017	5	3	2
2018	13	5	8
2019	14	5	9
2020	33	8	25
2021	26	7	19
2022	22	8	14
2023	6	2	4
<b>Total (pieces)</b>	136	52	84

### 3.3. Commentary on the Different Points of View of the Judges

#### (1) Deficiencies of the loan theory

In judicial practice, when the contributing parents files a civil loan lawsuit, they only need to provide prima facie evidence to prove that, while the child who receives the contribution uses the gift as a defense, and must to meet the high standard of proof beyond a reasonable doubt, which is inconsistent with the system of standards of proof set forth in the Civil Procedure Law [6].

During the children's marriage, the parents who made the contribution did not ask the children to return the contribution, but when the children's marriage changed, they filed a lawsuit claiming that the contribution was a loan. This is contrary to the stereotypical rule of interpretation in legal practice that "the first expression of meaning is superior to the second expression of meaning" [7]. The timing of the contributing parent's lawsuit not only defies common sense, but also violates the

principle of honesty and good faith. Supporting her claim could easily lead to the moral hazard of malicious collusion between the contributing parents and his or her child to the detriment of the child's spouse.

#### (2) Return of the nature of the gift

Parents to help their children to build a small family, relieve their children's financial pressure, improve their children's living conditions of the contribution behavior is different from ordinary civil subjects between the private lending behavior, essentially based on the kinship relationship of the gift. Marriage and family pay more attention to groupism, and market transactions focus on economic interests of egoism is different [8]. Therefore, the marriage of parents for children after the nature of the contribution for the nature of civil lending should be more cautious.

The close connection between the individual and the family, formed based on traditional Chinese culture, is not only deeply rooted in the importance the Chinese attach to the family,

but also determines their attitude towards marriage and the family. While pursuing their own interests, individuals consider the interests of other members of the entire family group, including spiritual and property interests. This makes Chinese people show an altruistic trait and identify with the family community and the community of property of husband and wife <sup>[9]</sup>. Parties with specific kinship status have the obligation to support each other, and usually live together and share interests, forming a community of interests. When parents contribute to the purchase of a house for their married children, without explicitly meaning to lend, they are reflecting the altruistic tendency in the spirit of groupism <sup>[10]</sup>.

In this regard, the author is of the view that parents' contributions to the purchase of housing for their children after marriage should be handled in accordance with the provisions of Article 29 of the "Interpretation of the Marriage and Family Code I". This is in line with the logic of traditional adjudication and social values.

#### **4. After the Marriage of Parents for the Children to Buy a House to Determine the Nature of the Referee Standard**

##### **4.1. Balancing the Interests of Parents and Spouses of Children**

For the marriage of parents for the children to buy a house for the nature of the contribution to the landing point is the contribution of parents and children of the balance of interests between the problem. Judicial practice can not be to protect the interests of one of the contributing parents, "one-size-fits-all" to determine that the parents of the marriage for the children to buy a house for the contribution of the children as a loan, requiring the children to return. Judicial process should be the duration of marriage of the children, the state of life after marriage, the contribution to the family as an important consideration, to effectively balance the interests of husband and wife and the interests of the family, to avoid a serious imbalance of interests. Of course, in the case of sudden marriage and divorce, to prevent the contribution of the contributing parents from becoming the joint property of the children within a short period of time, and to protect the rights and interests

of the contributing parents, the court may, as appropriate, decide in individual cases that the children should return the money contributed by the contributing parents.

##### **4.2. Compliance with the Community Property Regime**

Regarding the issue of parents' contributions to the purchase of a house for their children after marriage, Article 29, paragraph 2, of the "Interpretation of the Marriage and Family Code I" clearly stipulates that this shall be dealt with in accordance with the agreement of the parties. The purpose of the rule of priority of agreement is to resolve disputes and advocate the parties to sign an agreement in advance to clarify the nature of the parental contribution and the true intention of the parents, to avoid litigation in the event of a divorce <sup>[11]</sup>. Therefore, the rule of "the principle of gift from both spouses and the exception of personal gift from the children" has been clarified to deal with the issue of parents' contribution to the purchase of a house for their children after marriage. In line with the essence of the community property regime, one of the important qualities of marriage is that the parties to a marriage obtain common benefits from their common life through exchange, including the use of property and financial support in the economic sphere, mutual care and companionship in the spiritual sphere, and the common upbringing of their children <sup>[12]</sup>.

##### **4.3. Rational Allocation of the Burden of Proof**

Article 16 of the Provisions of the Supreme People's Court on Various Issues Concerning the Application of Law in Cases of Private Lending cannot be applied to disputes over the purchase of a house by parents for their children after marriage, because the judicial interpretation is a provision on private lending and borrowing, the prerequisite of which is the existence of a creditor-creditor relationship, whereas in the case of a dispute over the purchase of a house by parents for their children after marriage, it is not known whether the relationship is a creditor-creditor relationship or not. The child who receives the contribution asserts that the gift is a negative defense and that he or she does not bear the burden of proof <sup>[13]</sup>. In addition, the lending

relationship is usually documented in writing, with the lender providing the promissory note as the basis for demanding repayment from the borrower. Therefore, the lender usually holds the promissory note in good faith. However, in the gift relationship, the donor through the gift to give up the ownership of the gift, there is no problem to ask for the return of the donor does not need to keep the relevant evidence to prove the existence of the gift relationship. It can be seen that in such cases, parents claiming a loan relationship are more likely to keep evidence than children claiming a gift relationship, and they should be given a higher burden of proof than general private loan creditors.

### 5. Conclusion

Nowadays, the "Interpretation of the Marriage and Family Code I" re-establishes the rule that "a gift from both spouses is the principle, and a personal gift from the children is the exception" for the parents' contribution to the children's purchase of a house after the marriage and guides the parties concerned to make an agreement in advance. Therefore, the parties to enhance the sense of agreement, to sign an agreement in the parents contribute, in the agreement indicates the source of housing contribution and the nature of the parents' contribution, to prevent future disputes due to one-sided statement. Judicial practice, for the marriage of parents for children to buy a house for the determination of the nature of the contribution, but also to maintain a prudent attitude, consider the overall interests, comply with the existing rules, comply with the relevant provisions of the husband and wife of the joint property system, a reasonable allocation of the burden of proof, to ensure that the interests of all parties to the balance of interests, and effectively resolve the disputes.

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