

The Insider – Industry Expertise

Jointly owned property disputes Forcing a sale of property in NSW

29 October 2020

Henry Kwok and Patrick Loi

RESTRUCTURING INSOLVENCY ADVISORY DISPUTE RESOLUTION

Co-owners Property Disputes

There are many circumstances in life where you may end up as a joint owner of a property or land, either under a marriage or relationship, purchased with family members or relatives, inherited a family property or in pursuit of investment opportunities.

What should you do when these relationships end? How can you resolve disputes, and at the same time, protect and realise your interest in the property?



Unable to reach an agreement with your co-owner about the sale of jointly owned property?

In most circumstances, joint property owners can realise their gains or crystallise their losses in a change of property value between themselves under a mutual agreement.

However, when there is a disagreement, it becomes difficult to reach a mutual agreement and sell the property.

During these unreconciled relationship breakdowns, your co-owners may withhold key financial information from you and refuse to cooperate with you or your representative to have the property sold.

If you have not yet purchased a property with someone else, ensure that you have a co-owner's agreement in place.

Co-owner's Agreements

If you and your co-owner(s) have entered into a co-ownership agreement before the purchase of the property or land, such agreements can assist you and your co-owners to understand the rights, obligations, and responsibilities of the parties. It will also provide the relevant mechanisms and requirements on how to value and sell the property, how to resolve disputes or a difference in opinion, how to sell off co-ownership or purchase other co-owners' interests, etc.

Unfortunately, sometimes poorly drafted agreements may limit your abilities to take relevant court action to force a property sale.

If you do not have a co-owner's agreement in place, or there are irregularities in the agreement, you should enter into mediation before you commence any legal proceedings.

Talk to each other

The first step to resolve a dispute is to discuss with your co-owners constructively and amicably where possible. But of course, you should also have a structured plan beforehand, that include the reasons why you wish or need to sell the property and what is your proposed plan to sell the property or your share of the property. A plan will help you to understand the rights and obligations of each party under a co-owners agreements (if one existed), develop plans for a potential disagreement and work out what are the options available.

Unfortunately, sometimes even with mediation there may be too much animosity between the parties involved for a reasonable agreement to be reached.

Documentation is key

No matter what your plan is to address the disputes, it is important to document all dealings and correspondences between the parties. If you need to resolve the dispute in Court, you will need to be able to demonstrate to the Court the reasonable steps taken by you to resolve the matter and how other parties failed to comply with the co-ownership agreement, etc.



Apply to appoint a Statutory Trustee to Sell the Property

When your co-owners refuse to sell the property and are uncooperative you will have no other option available but to initiate court proceedings.

In NSW, you may file an application under Section 66G of the NSW Conveyancing Act 1919 ('the Act') to the Supreme Court of NSW to outline your circumstances and past negotiations with the co-owners regarding the dispute or sale of the property.

The Courts have discretionary power to consider an appointment of a Statutory Trustee ('the Trustee') to the property in dispute and vest the same to a Statutory Trust.

Generally, the Courts will provide the Trustee with the relevant power to control and sell the property. The Trustee must exercise these powers to the best of his ability with due care, diligence and the skills expected of a reasonable person when managing the affairs of a third party. The Trustee must also consider and act in the best interest of the trust beneficiaries when exercising this power, similar to that of a Liquidator when exercising his powers under the *Corporations Act 2001*.

The Trustee will also have powers to repair and improve the property, engage relevant tradesmen, solicitors, and agents, etc. for the sale of the property. The Trustee must sell the property within a reasonable timeframe for the best possible price under the market conditions and circumstances. The Act also provides that a purchaser does not need to be concerned about the consent of the co-owners if the sale transaction was conducted by the Trustee under the power of the Court. The sale under the trust shall not effect a severance of tenancy.

Once the property was sold, subject to any encumbrances over the property, the net sale proceedings will be held in trust pending distribution to the beneficiaries. The Trustee will have the right to be indemnified for costs and expenses properly incurred during the trust administration. The remuneration of the Trustee will be agreed with the beneficiaries or determined by the Court.

Being co-owners of the property does not necessarily mean that the surplus funds will be distributed equally as it is determined based on the contributions to the property. Contributions to the property include:

- Mortgage repayments;
- Council and water rates;
- Home insurance payments;
- Rent (if a co-owner lives in the property at the exclusion of the other co-owner(s)); and
- Major improvements that add value to the land/property.

If one co-owner has made greater contributions to the property than the other co-owner(s), full accounting needs to be completed to ensure each co-owner receives their fair share of the sale proceeds.



Greengate Advisory and how can we help?

Greengate Advisory is a firm dedicated to restructuring, insolvency and financial investigation for small-medium sized businesses and individuals.

If you are a co-owner of property and wish to have the property sold, or another co-owner seeks to have the property sold, it is recommended that you seek professional advice in relation to your rights and liabilities. As we are accustomed to acting as external administrators on official appointments under the *Corporations Act 2001*, we understand and know how to navigate the strict legal requirements and comply with the fiduciary duties required and imposed by the law and the Court.

We can analyse options that may be available to you if you are facing a dispute with your co-owner(s) and provide you with trustworthy, reliable and proactive advice.

We have undertaken appointments as the Trustee of a Statutory Trust to manage a trust administration and provide a reasonable and timely outcome for all parties.

Greengate Advisory

Restructuring | Insolvency | Advisory | Dispute Resolution

Experts

Patrick Loi | Henry Kwok | Andrew Jo | John Chand

Level 4, 130 Pitt Street, Sydney NSW 2000

1300 521 161 | info@ggadvisory.com.au

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