

Things to consider when seeking to remove someone's name from deeds to jointly owned property.

By Lorren Wilson

The best practical advice which can be given to a person seeking to have a co-owners name removed from title deeds is to simply ask the co-owner to agree to remove their name. An agreement between co-owners will make the process smoother and, in many cases, far less expensive.

When the desire to have a name removed is caused by a marital breakdown, the divorcing couple can agree on how they wish the marital assets to be divided and, if applicable, what payments will be made between them. If the couple cannot agree, then the Court will decide and will be directed by the Matrimonial Causes Act 1974 and applicable cases.

If the divorcing couple agrees to transfer title to the matrimonial home and the terms of the agreement are included in an order of the Court governing the division of assets, there will be a considerable stamp duty savings on the deed transferring title. For example, stamp duty payable on a conveyance pursuant to an order of the Court is currently \$200.00 regardless of the value of the property. If the same property is conveyed without a Court Order pursuant to divorce, stamp duty will be payable based on the market value of the property. A property valued at \$500,000.00 would attract stamp duty of \$14,000.00.

Sometimes, the desire to have a name removed arises where co-owners, who happen to be family members, have had a "falling out". The problem is compounded if the property that is jointly held has been in a family for generations. If one co-owner desires to keep the property in the family, he may consider purchasing the other co-owners share. The property can be valued and the valuation can be the basis of a purchase price.

If neither co-owner is in a position to purchase the other's share and the desire to have the co-owners name removed is stronger than the desire to keep the property in the family, consider offering the property for sale to the public. The sale proceeds can then be split between the co-owners in proportion to their respective shares.

The option mentioned above may not be desired if one the co-owners actually lives in the property.

If after discussing the matter it becomes clear that a "meeting of the minds" is not forthcoming, recourse can be found in the Courts with a petition made pursuant to the provisions of The Partition Act 1855 or The Partition Act 1914. The Partition Act 1855 gives the Court power to partition (divide) land between co-owners. The Partition Act 1914 gives

the Court even wider powers. The Court can have the property valued, determine each co-owners share, order the sale of property, sign the deed transferring title on behalf of a co-owner who refuses to sign, order a residing co-owner to give vacant possession when the property is sold and divide the sale proceeds between the co-owners. Pursuing this sort of remedy will require a lawyer and legal costs will be incurred.

As you can see from the above, there is quite a lot to consider when seeking to remove a person's name from title deeds. Addressing your mind to these issues will hopefully assist in reaching agreements with the other co-owners. In case of doubt, a lawyer will advise you of your options and guide you through the process.

This article contains information of a general nature and should not be relied upon as a substitute for professional legal advice given with respect to a particular factual situation.

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