

## **Sunday Times - JUNE 20, 2004**

### **Can my brother keep flat from his daughter?**

**Q** MY BROTHER fell into a coma when he was in his mid-20s. He has since recovered but has a lower-than-average IQ and has been unable to work.

After he recovered from the coma, his wife divorced him and their four children are now apparently staying with her. My brother's wife and kids have not visited him since the divorce 20 years ago.

My brother lives in a three-room Housing Board (HDB) flat that was bought by my mother. She is also servicing the loan. Lately, one of my brother's daughters found out that he is the sole owner of the flat. She has since tried to find ways to 'acknowledge' my brother and wants to put her name down as co-owner of the flat.

All these years, my brother's medical and personal expenses have been paid for by my mother.

My questions are: What happens if my brother's daughter really becomes a co-owner of the flat and somehow persuades my brother to sell it? Can my mother engage a lawyer to stop the sale or prevent his daughter from registering as co-owner?

Also, what happens if my brother passes away without writing a will? Will the proceeds from the sale of the flat go to my mother, since she is the person who has been servicing the loan?

**A** THERE are a few issues that must be looked at.

Firstly, if your mother has paid for some or all of the purchase price of the HDB flat, there is a possibility that she has an interest in the flat.

If so, she does not have to wait until there is an attempt to sell the flat before taking steps to protect her interest.

She could try to obtain a declaration from the court recognising her beneficial interest in the flat.

This recognition of her interest is possible because of the principle of 'resulting trust'.

Generally, where a party has made the initial payment for a piece of property, serviced the mortgage instalments or both, but his name does not appear in the legal title to the property, the law presumes a resulting trust of that property in favour of the person who provided the purchase money. That party will be entitled to a share of the property in proportion to his contribution to the purchase price.

However, in relation to HDB flats, your mother may face an additional hurdle as section 51(4) of the Housing and Development Act makes certain trusts in respect of HDB flats void.

Assuming that the resulting trust in favour of the mother is not prohibited by section 51(4) of the Act, your mother's beneficial interest in the flat can give her some basis to prevent your brother's daughter from registering herself as co-owner.

Secondly, if the daughter has in the meantime managed to get her father to sell the flat through the exercise of undue influence or misrepresentation, it may not be possible to stop the sale if the purchaser is an innocent party who is not aware of the wrong committed by the daughter.

This is so even if your mother has a beneficial interest in the property. Your mother's only right will be to sue for damages.

Thirdly, if your brother dies without a will, his property will be divided based on rules laid down in the Intestate Succession Act.

In this case, each of the four children will be entitled to a 25 per cent share of the estate.

In this case, in order for the mother to obtain a share of the HDB flat or sale proceeds, she will have to bring an action in court seeking a declaration that she is entitled to the beneficial interest in the flat under a resulting trust.

Thus, it would be prudent for your brother to draw up a will leaving everything to your mother. Since his IQ is on the low side, care must be taken to ensure that he understands the nature and effect of the will so as to prevent any challenges to the will later by his children. It might be advisable to have a doctor present to certify his understanding of the terms of the will.

Finally, if your brother's IQ is very low and he cannot be considered able to handle the daily affairs of a normal person, it might be necessary to appoint a legal guardian of sorts to take care of his affairs.

The legal guardian will then have the right to deal with the affairs of your brother in his best interest. This is done by making an application to court.

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Advice provided in this column is meant for information only and not as a substitute for comprehensive professional advice.

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