



Deceased insolvent estates: Survivorship

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A briefing from our Business Support and Insolvency team

Where an Insolvency Administration Order is granted over a deceased's estate, it is often viewed as an estate that is unlikely to return any significant value to creditors. This bulletin highlights the opportunity to improve realisations in an insolvent deceased's estate by avoiding the effects of 'survivorship' on property owned as joint tenants.

Survivorship

When two or more people purchase a property together they have the option of registering their ownership as joint tenants. The legal effect of registering a joint tenancy is that on the death of one of the joint tenants, the beneficial interest (or equity) held by the deceased proprietor passes automatically to the remaining live joint tenant(s).

This transfer of a beneficial interest occurs without the requirement for a last Will and Testament on the part of the deceased, and will enable the remaining live joint tenant(s) to register the legal estate to the relevant property in their name.

Survivorship therefore operates to transfer an interest in property out of a deceased's estate, without the deceased's estate receiving any consideration for the transfer. In the case of an insolvent deceased estate, this transfer occurs to the detriment of creditors of the estate. The interest lost to the deceased estate can be identified by considering if the deceased person were still alive and the property was sold; on a sale of the property it will be presumed that two joint tenants are each entitled to 50% of the net sale proceeds

(after payment of any mortgages or other secured lending). We therefore assume that in this example the deceased was entitled to 50% of the net equity in the property.

Trustee's claim to the property

On the granting of an Insolvency Administration Order, the deceased's estate is declared insolvent and a Trustee (being a licensed Insolvency Practitioner) is appointed to administer the estate.

Under the provisions of the Insolvency Act 1986 ("the Act") a Trustee of an insolvent deceased's estate is entitled to require a surviving joint tenant owner of a property to pay the Trustee a sum representing the deceased's former interest in their property.

As explained, if prior to death it is presumed that the deceased was entitled to 50% of the net equity in the property, then the Trustee can demand the surviving joint tenant pay the market value representing this sum into the insolvent deceased's estate as consideration for the interest in the property which transferred under the rules of survivorship.

The Trustee is entitled to seek payment of this sum pursuant to section 421A of the Act which states:

421A Insolvent estates: joint tenancies

1. This section applies where:
 - a. an insolvency administration order has been made in respect of the insolvent estate of a deceased person;
 - b. the petition for the order was presented after the commencement of this section and within the period of five years beginning with the day on which he died; and
 - c. immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

2. For the purpose of securing that debts and other liabilities to which the estate is subject are met, the court may, on an application by the Trustee appointed pursuant to the Insolvency Administration Order, make an order under this section requiring the survivor to pay to the Trustee an amount not exceeding the value lost to the estate.

The above section refers to the Trustee obtaining a Court Order, requiring the survivor to pay into the deceased's estate a sum representing the interest in the property which has been lost to the estate.

The Trustee's claim to the property does not form a proprietary right in the property, it is a right to a money claim only. Therefore the Trustee is not permitted to register an interest against the property without the consent of the surviving joint tenant(s).

The Trustee's claim is limited in the first instance to a request to receive the value of the property lost to the deceased estate. In the absence an agreement for payment of the value of property transferred, the Trustee can apply to Court for an Order that the surviving joint tenant pay into the deceased's estate a sum representing the interest in the property which has been lost to the estate.

Where there are multiple surviving joint tenants, the Court can make an Order against any or all of them, but the Order is limited to the value of the lost estate attributable to them as an individual (it will not be a joint and several debt).

If an Order granted under section 421A of the Act is not complied with, the Trustee will have the usual range of options for enforcement that would be available to any party enforcing a County Court

money Judgment (which are beyond the scope of this bulletin).

Conclusion

Insolvency practitioners should be aware of the availability of this provision as an option for returning realisations to creditors in what may have otherwise been viewed as an insolvent deceased's estate without value.

Although no proprietary right is created for a Trustee in the property transferred under survivorship, this section of the Act extends the options available to the Trustee of an Insolvency Administration Order to assist in the duty to maximise realisations for the benefit of creditors of the insolvent deceased's estate.

More information

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