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## Why the law bars some people from having a share in their relatives' HDB flats



HDB flats are considered "protected" assets and that ineligible owners cannot try to profit. PHOTO: ST FILE



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SINGAPORE - With prices of some Housing Board flats in older estates hitting the million-dollar range, it seems like a good time to get a piece of the action.

After all, the HDB sector is certainly tempting, given that values are still lower than private properties. But there is one major impediment for property investors.

You cannot buy an HDB flat if you already own real estate - either residential, land or a commercial property. Some people think there is a way around this prohibition by getting a relative or friend to buy on their behalf.

But before you consider putting money into an HDB flat with the help of a "nominee", you should know that there is no legal recourse if the nominee reneges on such "under-the-table" deals with you.

This does not apply in the private market where it is allowed to put another person's name on the title deed.

But a little-known law in the Housing and Development Act, which governs HDB flats, specifically deems trusts, or an arrangement to hold assets for another person's benefit, as null and void.

This is because HDB flats are considered protected assets and that ineligible owners cannot try to profit from the scheme, which provides affordable housing to most families here.

So if you pay the entire cost of the flat and then put the property in the name of someone else, you are on shaky ground as the person who is registered on the title will be deemed by the HDB as the only owner, and he can choose to ignore any claims you might later make.

So far, no private investor has been exposed over such raw deals. But a number of families have learnt their lessons the hard way when they sought to get around the rule that disallows HDB ownership through the back door.

Several families have ended up battling in court over the past two years because relatives who paid for the HDB flats later claimed a stake from the registered owners but they lost due to the law that nullifies such private "trusts".

These cases illustrate the very real risks you take in trying to get around this rule.

### Parents claimed ownership of son's flat

A couple tried to stop their former daughter-in-law from staking a claim of their son's flat in Kim Tian Road as part of their divorce proceedings.

The dispute arose because the son failed to comply with certain court orders, and this resulted in the former wife obtaining an order for the sale of his flat.

Although the flat was in the son's name, his parents claimed they were actual owners because it was bought with the sale proceeds of their previous flat in Choa Chu Kang.

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This flat was sold in 2007 and the family bought another flat near the Bukit Merah estate later that year.

The son convinced his parents to register the flat in his name so that they would not need to pay a resale levy, which prior owners of HDB flats have to pay when they buy another new flat.

The flat was later acquired by the Government in 2012 for redevelopment purposes and the son used the compensation to buy the Kim Tian flat.

As the funds the parents gave their son exceeded the value of the current flat, they argued that they should be deemed the beneficial owners.

They also argued that the prohibition in the HDB law was meant to stop ineligible buyers, such as foreigners, and not citizens like them who could buy such flats.

But the Court of Appeal ruled that the parents could not have any interest in the flat.



Housing flats at Tiong Bahru estate. PHOTO: ST

Chief Justice Sundaresh Menon said: "The parents were not eligible to purchase the Kim Tian flat without paying the resale levy. If the parents were correct in their contentions, the entire subsidy scheme operated by the HDB would fall apart, as every purchaser would be able to get around paying the resale levy by entering into such an arrangement."

This meant that the son was the only owner of the flat, which in turn meant that the property could be dealt with in his divorce proceedings.

**Daughters claimed mother's flat as theirs**

In this case, two sisters wanted a court order that would declare that they were the beneficial owner of the HDB flat that was registered in their mother's name.

The dispute arose because they learnt that their mother, who had another daughter and a son, had noted in her will that the flat would go to her son.



Both sisters had jointly paid for the flat over the years and one of them, alongside their mother, was first listed as owners when they bought it in 1980.

In 1987, this sister removed her name because she got married and bought another flat.

The other sister then took over as co-owner with their mother and this continued until 1993, when she in turn married and bought another unit after removing her name from her mother's flat.

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But she continued to help her mother pay for the mortgage until it was fully paid up.

The High Court dismissed the sisters' case, noting that their situation was clearly an example of the type of cases the HDB law prohibits - namely to prevent ineligible people from having a stake in such flats.

The court ruled that as existing owners of HDB flats, they could not claim any interest in their mother's flat.

Their mother, who is now in a community hospital, did not participate in the court case.



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Generic photograph of HDB flats in the Toa Payoh estate. 04 February 2022.

</p> PHOTO: ST

High Court judge Andre Maniam noted that the woman had in her will expressed her gratitude to the two sisters for being "wonderful daughters who had given her monies and been understanding".

She hoped her children would be generous and kind to each other, and that they would not quarrel over her will or her property.

The judge added that the sisters should be commended for the payments they had made for the flat, for taking care of their parents and for providing their brother with a home.

"But they have their own HDB flats now, and they cannot also claim their mother's' flat, or its sale proceeds, for themselves," he ruled.

## What should owners do

Every citizen has the right to apply for new HDB flats twice, by being able to buy another one after selling the first one. So there is really no need to risk losing your money by trying to beat the system and get a nominee to buy another flat on your behalf.

Even if the nominee is a trustworthy relative who will not dispute your claim, nominees who take part in such schemes actually sacrifice their own chances of owning affordable homes.

If you are making plans to distribute your assets to your beneficiaries, you should consult a lawyer so that you do not end up with joint owners who later refuse to give up their shares.

Many families end up in court battles because people make erroneous assumptions on the workings of the law, thinking that their beneficiaries will simply abide by their wishes.

But as these cases show, it is better to spend some money to seek legal help so that your relatives will not fight over your properties and money later.

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## Law barring ineligible owners

The law that bars ineligible people from having interests in HDB flats is in the Housing and Development Act, in particular:

1. The law states that no trust in respect of any HDB property shall be created by the owner without the prior written approval of the Housing Board. This means that an owner cannot on his own make any claim that he is holding the property on behalf of others.
2. Every trust which purports to be created for any HDB property without the prior written approval of the Housing Board will be deemed null and void. This means that unless permission is given, any arrangement that purports to give an interest to a non-owner will be deemed invalid.

3. The Act also states that no person shall become entitled or have any interest in any HDB property under any form of legal trust. The Court of Appeal rules that its purpose is to prevent ineligible persons from claiming any interest in such properties.

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