

- 1. Tajinder wants to buy a property. She looks on the land register and sees that the house is registered to Paul. Tajinder goes to look at the property. She meets Suli, who seems to be living there. She asks Suli whether she has any interest in the property. Suli does not seem to want to answer Tajinder's questions. She just says that the house 'is nothing to do with her'. Tajinder is very keen to buy the house, but is now a little worried about Suli. Advise Tajinder.**

Tajinder is right to be concerned. When only one legal owner is registered on the land register, it does not necessarily mean that there is only one equitable owner of the property. Paul may well be the sole legal and equitable owner, but he may also be holding the house on trust for someone else, or indeed, as Tajinder suspects, Suli may have an equitable interest in the property and Paul will be holding on trust for himself and Suli.

If Suli does have an equitable interest in the property and is in actual occupation of it, she may well have an overriding interest which would be binding on a purchaser of the property (Schedule 3 para 2 LRA 2002 & see, *Williams & Glynn v Boland* [1981] AC 487).

Even if Suli's interest is potentially overriding, Tajinder will not be bound if Suli does not disclose her interest when she would be reasonably expected to do so. Tajinder's enquiry would seem to have offered just such an opportunity which Suli apparently failed to take.

The difficulty here is that Suli may not even be aware yet that she has an equitable interest in the property, as such interests often arise informally.

If she decides to go ahead and purchase the house, Tajinder would be advised to ensure that she pays the purchase money to two trustees (not just Paul alone). If she does this, she will trigger the process of overreaching. Suli's interest (if any) in the property will be swept off the property itself and into the proceeds of sale. Tajinder will be able to enjoy her new home without any worry about lurking equitable owners.

See 7.3.1 & 7.3.3 for more detail

- 2. After Tajinder leaves, Suli becomes concerned that Paul is trying to sell the house. She contributed a considerable amount of money to the purchase price. She has been living there for the past three years, although her job as a pilot takes her on many trips away from home. She is due to go on a long-haul trip to China and she was intending to combine this with a three-month holiday, travelling around Asia. Now she feels anxious about what Paul might do when she goes away. Advise Suli.**

Suli has acquired an equitable interest in the property under a resulting (and probably also a constructive) trust. She is also in actual occupation of the property. She has both of the elements required to establish an overriding interest in it (see Schedule 3, para 2 LRA 2002). The fact that she is away from home on business will not negate her actual occupation (*Chhokar v Chhokar* [1984] FLR 313 – see case close up at

7.3.3). She should be aware that if she fails to disclose her interest when asked, she will lose the overriding status.

The difficulty for Suli is that her interest does not appear on the land register, as she is not a legal owner, and equitable interests are kept off the face of the register. This means that a potential purchaser will not know of her interest. In addition, her interest may also be overreached if the purchaser pays the purchase money to two trustees. This means that Suli will have no further interest in the house, but will instead have to chase Paul for her share of the proceeds of sale.

Particularly as she is about to go away, Suli would be advised to enter a restriction on Paul's land registry entry. She has "sufficient interest" to do this (LRA 2002, s. 43(1)(c) and Land Registration Rules 2003 (LRR 2003), r. 93(a)). This would at least warn the potential purchaser of her interest, and thus offer her a degree of protection. Ideally, she should discuss with Paul the possibility of adding her name to the legal title of the property, and agree her equitable share. The property could not then be sold without her consent and signature.

See 7.3.3 for more details

- 3. Louise and Andy have been trying to buy their dream home by the seaside. They have realized that they simply cannot afford it by themselves, so they ask Ken and Doreen—Louise's parents—to help them. Ken and Doreen have plenty of money, so they agree to provide half of the money to buy the house. They make it clear that this is not a gift, and that they intend to live in the house with Louise and Andy. They say that they do not want their names put on the land register, however, because they do not want '*people to know [their] business*'. The house is registered in the joint names of Louise and Andy. Both couples live in the property happily for a few years. One day, Louise and Andy decide to set up a dog-grooming business. Unknown to Ken and Doreen, they raise some funds by granting a mortgage over the seaside house. Unfortunately, they find that they have overestimated the demand for dog grooming by the seaside. They soon fall behind on their mortgage payments and the bank starts repossession proceedings. Advise Ken and Doreen.**

The land register will show that Louise and Andy are the legal owners of the property, and as it seems that no restriction has been entered, will not indicate any other equitable interests in the property.

Ken and Doreen will have an equitable interest under a resulting trust, however, as they contributed directly to the purchase price, and indicated that this was not intended as a gift. They therefore own 50% of the equity of the property, as their share will be calculated in mathematical proportion to their contribution.

The mortgagee was unaware of Ken and Doreen's interest in the property. This does not matter to the mortgagee, provided that they paid the mortgage funds to two trustees (in this case, Louise and Andy). If the mortgagee did this, then it will not be

bound by Ken and Doreen's interest, even though that interest is potentially overriding (as they have an equitable interest and are in actual occupation of the property). This is because when purchase money is paid to two trustees, the interests of any beneficiaries in the land are overreached. Ken and Doreen's interest therefore is swept off the land and into the proceeds of sale. This was established in *City of London Building Society v Flegg* [1988] AC 54. See case close up at 7.3.1

Unfortunately for Ken and Doreen, they no longer have an interest in the property. If the property is sold by the mortgagee, Ken and Doreen must pursue Louise and Andy for their share of any surplus funds after the mortgage debt has been repaid.

See 7.3.1 for more detail.