

Sunday Times - MAY 23, 2004
How can I get son to return my \$200,000?

Q MY WIFE and I are in our 60s. We contributed \$200,000 cash to help our son buy a condominium unit for \$532,000 in 1998.

Our son has decided to migrate to Canada with his family. He wants to retain the condominium as a long-term investment and for rental. But my wife and I do not agree with his plan. Now that he wishes to become a Canadian citizen, we want to recover our loan from him. Also, we need the money for our retirement expenses.

Please advise what recourse we have.

A YOUR recourse would depend on a number of things. Firstly, if your name is included in the legal title of the house, you could ask your son to buy your share and have the title transferred entirely to his name.

If he does not, you could force a sale of the house and recover the value of your share by applying to the court for an order that the property be sold and the sale proceeds divided according to the respective party's contribution to the purchase price.

Secondly, if the house is in the name of your son and daughter-in-law only, you would have to sue your son to recover the money.

If you bring a civil action in court, you could simply sue to recover the loan or actually claim an interest in the house on the basis that you provided part of the purchase money.

In law, where property is bought with funds provided by a third party whose name does not appear in the legal title to the property, there is a presumption of a resulting trust of that property in favour of the person who provided the purchase money.

The third party would generally be entitled to a share of the property in proportion to his contribution to the purchase price.

But there is another presumption that could work against you.

Where a parent gives money to a child, or provides money for the purchase of property in favour of the child, the law presumes that the parent intended it as a gift.

If the presumption is not rebutted, you will not be allowed to recover the \$200,000 from him.

Thus, if you sue your son, the first issue would be whether the \$200,000 was a loan or an outright gift to him.

This is essentially a question of fact which the court would decide based on all the circumstances at the time the property was purchased.

In order to avoid potential litigation, parents wishing to assist their children should make their intention clear when making the transfer of property or providing part of the purchase price of the matrimonial home for their newly wed children.

If the money is intended to be a loan, ensure that this is documented.

State clearly that you are providing a friendly loan, and not intending it as a gift. Further, insist on obtaining a receipt in your name for your contribution towards the purchase price from the law firm handling the purchase of the house, even though the house is not being purchased in your name.

The best way for parents to protect their interest, would be to require their name to be included in the legal title to the house. The parents and the child should ideally hold the title as tenants-in-common, their shares proportionate to their respective contribution to the purchase price.

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