

# Regret transferring your property? Get it back

If you are a senior citizen and have transferred your property to relatives and have then been forcibly evicted, you should approach the special maintenance tribunal to seek legal relief

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## htestates LEGAL REMEDIES

The previous column outlined the background and scope of the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (Act). Section 23 of the Act has wide ramifications in the context of transfer of immovable property by senior citizens and nature of their ownership of such immovable property.

Section 23 of the Act deals with cases where senior citizens have transferred their property to their offspring/relatives out of love and affection and then been forcibly evicted from there or been wrongfully denied access to and enjoyment of their property by their children/relatives.

This section essentially enables an aggrieved senior citizen to reclaim ownership and/or possession of his property that had been earlier transferred by him/her. As the Act provides a broad and comprehensive definition of the term 'property' by

including (i) both immovable and movable property; (ii) both ancestral property and self-acquired property; (iii) both tangible and intangible property, there is wide scope for seeking relief. In order to be eligible to seek relief under the Act, some important points to keep in mind are:

The senior citizen should have made the transfer of his property in favour of his offspring/relative, after the commencement of the Act in 2007.

The mode of transfer of the property can be sale, gift, long-term lease, etc.

It is important that the senior citizen should have transferred his property to his offspring/relative, subject to the condition that the transferee would provide basic amenities and fulfill the essential needs of the

senior citizen. To this effect, senior citizens may certainly include an explicit clause for setting out this condition in the sale deed/gift deed.

In situations where the transferee either refuses to or fails to honour and adequately fulfill this condition in the future, the senior citizen can approach the special maintenance tribunals established under this Act to seek legal relief.

The maintenance tribunal would first assess whether the requirements set out above are present in a particular case.

In case these conditions are present, the transfer of property in question would be deemed as a transfer that was made by fraud, coercion or under undue influence due to the transferee's subsequent failure in fulfilling the condition of providing basic amenities to the senior citizen.

The transfer of property as earlier made by the senior citizen in favour of his offspring/relative can also be declared void, if the senior citizen so desires. In other words, if the



senior citizen chooses to exercise this choice, the transfer of property made by him shall be deemed to never have taken effect.

The Act takes care to provide for senior citizens who find themselves unable to approach the maintenance tribunals. In such cases, action may be taken on the senior citizen's behalf by voluntary organisations/associations.

Further, senior citizens can choose to be represented by a

specially designated maintenance officer during the proceedings.

Senior citizens who are aggrieved by the order of a maintenance tribunal may, within 60 days from the date of the order, file an appeal to the maintenance appellate tribunal.

To curb prolonged litigation, the appellate tribunal endeavours to decide the case within one month from the receipt of the senior citizen's appeal. This way, maintenance tribunals

have succeeded in restoring peaceful, physical possession of property under dispute to senior citizens since the Act was enacted.

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Navin Raheja, CMD Raheja Developers, (left) being felicitated by Girija Vyas, union minister for housing and urban poverty alleviation, at the ASSOCHAM Excellence Awards

## Raheja Developers wins ASSOCHAM Excellence Award

Raheja Developers was presented the Best CSR Initiative of the Year Award at the ASSOCHAM Excellence Awards in the Capital recently. Union minister for housing and urban poverty alleviation (MHUPA) Girija Vyas presented the award to Navin M Raheja, CMD Raheja Developers. Arun Kumar Misra, secretary, MHUPA, and DS Rawat, secretary general, ASSOCHAM, were also present on the occasion. The group was felicitated at a summit-cum-excellence awards ceremony by ASSOCHAM India on affordable housing. The summit discussed key issues on urbanisation and housing challenges of India, PPP in affordable housing and also presented awards to selected companies for showing best practices in the sector.

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## HT ESTATES QUIZ OF THE WEEK

Answer the following questions and win a prize. The answers can be found in this edition

Q1 What is NCZ?

Q2 Who is Pradeep Kharbanda?

Q3 Where is Catskill Forest Preserve?

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## htestates CHEQUE BOOK Harsh Roongta

I recently graduated from a university in US and will be starting work soon. Can I become a co-applicant or co-signer for a home loan with my father here in India? I want this because he is nearing retirement and will be getting a lesser amount as home loan. I want to co-apply with him so that he gets a sufficient loan amount. Is this possible or can you suggest a better alternative?

-Sudesh Rao

Of course you can become a co-applicant (that's the term we use in India rather than the term co-signer which is more commonly used in the US) with your father. It may not add much weight to your father's sanction process though as

most lenders would want to look at a track record of earning of at least two years before they consider your earnings for approving a much higher joint loan. Having said that, lenders definitely will make exceptions to the rule if you have graduated from well-known institutions and have a job with well-known companies. It definitely is worth a try.

I have a plot in a colony. I need a loan of approximately ₹10 lakh for construction. I already have a personal loan. Please suggest the best way to get a loan for construction.  
-Shivam Sood  
You will have to submit an

estimate of the total cost of construction, duly certified by an architect/civil engineer.

The loan will be released in parts, based on the progress of the construction. The lender may also insist on sending his own technical personnel to assess the progress of construction or may decide to rely on certificates/photographs submitted by you.

Some lenders are not comfortable funding self-constructed properties and hence, your choices will be limited. You can talk to all the standard lenders for availing a construction loan.

Your existing personal loan will also have an impact on your construction loan eligibility and the lender will calculate your eligibility based on the EMI being paid now and the room left to pay an additional EMI for another loan on the basis of your earnings.

What are the tax implications if a person buys a house with a loan and sells it (a) within three years, (b) after three years? Further, what is the impact on benefits related to interest and capital repayment?

-Subोध Sharma

If you sell a house within a period of three years from the date of taking possession, the difference between the cost price and the net price shall be treated as short-term capital gains and will be included in your other incomes and taxed accordingly. But, if the sale takes place after three years, then the profit shall be treated as long-term capital gains and will be taxed at 20% after indexation. You can save on long-term capital gains by investing the capital gains in another house property or bonds. In case you sell the house purchased with a loan

within a period of five years from the end of the financial year in which possession of the property was taken and claim tax benefits under Section 80 C in respect of the principal portion of the loan, all the deductions allowed in respect of the principal portion of such a loan will be treated as income of the year in which the house was sold.

A bank in its documentary requirements has asked for proof of the origin of own contribution. Is this

an accepted norm in the industry?

-Shikha Shah

The bank definitely is interested in knowing how you are funding your down payment contribution. If you have borrowed for the purpose of making the down payment, it is likely to put pressure on you in the future and thus affect the servicing of the home loan.

Harsh Roongta is CEO, Apna Paisa. He can be reached at ceo@apnapaisa.com

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Map not to Scale

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