

A Solution to Co-ownership Property Disputes

s66G for Dummies from A to Z | A solution to Co-ownership Property Disputes

Imagine a three-way tug-of-war over a family home, commercial, industrial or rural property. When co-ownership turns sour, section 66G emerges as the referee who can blow the whistle and end the game. This powerful legal tool allows the Court to appoint trustees who act as neutral players, steering the ship safely to shore through the storm of dispute.

Consultation at no cost

Company directors and advisers are welcome to call David Levi for an initial consultation that will not incur a fee on 0418 602 466. Training for advisers in relation to these and other topics can also be arranged via videoconference. Levi Consulting services all Australian States and Territories.



A to Z s 66G Conveyancing Act

We apologise up-front for the irreverent sense of humour but rest assured we can always be counted on for sage advice on s66G and co-ownership disputes. In the tangled world of shared property ownership, there exists a little-known legal superhero wearing cape number 66G. Not all heroes wear capes, but this one does wear a capital letter and a number.

Section 66G: The relationship counsellor for property co-ownership disputes

Imagine you and your brother inherit your grandmother's charming Victorian terrace (or commercial, industrial or rural property). You want to sell and travel the world with your share. He's determined to keep it as a shrine to childhood memories, complete with the plastic-covered furniture and the lingering smell of mothballs. Neither of you will budge. Family dinners become battlegrounds. You start "accidentally" forgetting to invite him to Christmas. Enter s66G of the *Conveyancing Act 1919* (NSW), that is, the stern but fair parent who steps in when property co-owners can't play nicely together.

How it works

When co-owners reach an impasse that makes Brexit negotiations look harmonious, s66G allows the Supreme Court or Federal Court to appoint trustees to sell the property, dividing proceeds according to ownership shares. It's like having professional adults take over when the children can't agree on who gets the bigger slice of cake. The beauty of s66G is its simplicity: it cuts through emotion with the cold, refreshing blade of legal pragmatism.

The dance of the Trustees

Once appointed, trustees become temporary owners of the property. They're the new sheriffs in town, with powers to:

- Kick out the stubborn brother-in-law who's been "just staying temporarily" for eight years;
- Find real estate agents;
- Sell the property at the optimal price; and
- Distribute proceeds according to ownership shares.

Our real-life tales

- **The Family Feud:** Three siblings inherited their parents' beach house. Two wanted to sell. One refused, having built an emotional attachment to the property (and a literal attachment in the form of an unauthorised granny flat). After two years of Christmas cards with increasingly passive-aggressive notes, we were appointed as trustees. The property sold for above market value, and the siblings now meet for holidays.
- **The Investment Gone Wrong:** Two friends bought a rental property together during the property boom. When the friendship soured faster than milk in summer, one refused to sell out of spite. We were appointed as trustees, sold the property, and both parties walked away with enough money to buy properties on opposite sides of town.

When to consider the nuclear option

s66G isn't for minor disagreements about what colour to paint the bathroom. It's for those intractable situations when:

- Your co-owner has developed a mysterious hearing problem whenever you mention "selling";
- Mediation results in more therapy bills than solutions;
- One party is deliberately sabotaging sale attempts; and
- You've calculated that the legal fees for fighting will exceed the value of the actual property (surprisingly common).

The bottom line

s66G might seem drastic, but in the messy world of shared ownership, sometimes you need a clear path through the emotional minefield. It's not about winning or losing, it's about finding resolution when resolution seems impossible.

Why This Booklet Matters

Owning property together is simple — until it isn't. Families, friends, and business partners invest together, but life changes. s66G provides a clear legal pathway to resolve co-ownership disputes.

Co-ownership disputes often seem difficult to resolve but the use of s66G of the *Conveyancing Act 1919* (NSW) offers a powerful solution. s66G can help resolve disputes, particularly in cases involving inherited properties, investment properties where there is disagreement between partners, divorce settlements and other situations.

This booklet explains:

- What s66G is.
- How it works.
- Real-life examples.
- Technical stuff for lawyers.

What is section 66G?

Section 66G of the *Conveyancing Act 1919* (NSW) establishes a formal process for the appointment of trustees for the sale of a property in circumstances where co-owners are in an irreconcilable dispute.

Disputes arise when one co-owner wishes to sell or divest their interest while the other co-owner does not want to sell or is unwilling or unable to buyout the co-owner.

In such disputes, s66G can be of great assistance.

The commencement or threat of s66G proceedings is often pivotal in ending disputes between co-owners of real estate. Co-owners could agree to sell, or one co-owner could agree to acquire the interest of the other.

In s66G matters where we have consented to act as trustees, in the absence of a commercial resolution, section 66G Orders are made by the Court.

Our expertise and experience

We have acted in matters relating to residential, commercial, industrial and rural land. We include some cases where we have acted.

We include a sample of 4-case studies where we have acted as trustees in s66G appointments, and where we have acted as Court-appointed receivers over partnerships in property disputes.

Case study 1 Queanbeyan - s 66G

Levi and Samakeh were appointed trustees for sale of land and building (3 residential flats, 3 retail shops) in Queanbeyan NSW under s 66G. The dispute arose from lack of consensus between family members on whether the properties should be sold. Some family members had lived in the building for many years.

Upon appointment we visited the premises and liaised with the parties in dispute as well as agents. We obtained independent valuation of the property and strategy to conduct a sale campaign. This led us to determine that it would lead to the best outcome if certain defendants vacated the residential flats. One of the defendants refused to vacate and brought proceedings in the NSW Civil and Administrative Tribunal. We recognised the costs and delay of NCAT and made commercial arrangements with the defendants. The property was subsequently sold by auction and funds distributed.

Pantos & Ors v Georgopoulos & Others SCNSW 2018/00306361

Case study 2 Homebush - s 66G

In another matter, Levi and Solomons were appointed under s 66G as trustees for sale of property (residential real estate) of a deceased's estate in Homebush NSW.

The house had been without any occupants or maintenance for several years. After a clean-up, determination of strategy, valuation and appointment of agents the property was put to sale by auction and the proceeds distributed.

Steinecke & Ors v Wayne & Ors [2011] NSWSC 428

Case study 3 Boarding house, rented residentials, rented granny flats NSW.

Court-appointed receivership

Levi's experience in property matters includes acting as court-appointed receiver of partnerships where there is dispute between partners.

Levi accepted Court-appointment as receiver over two contested partnerships that held and operated a registered boarding house in South Albury, and three rented residential homes including rented granny flats in North Albury, Wyong and Broken Hill.

Three or four friends had formed partnerships and had a good strategy to buy residential corner blocks with a pre-existing house in regional areas and then build-to-rent a granny flat to accelerate repayment of the mortgage. They purchased a boarding house which was difficult to manage, required boarding house experience and brought their relationships unstuck and into dispute.

Despite difficulties arising from COVID-19 particularly in connection with the boarding house, Levi liaised with stakeholders, agents, valuers, regulators and lawyers to determine and investigate stakeholder issues, and develop and implement a sale strategy of all of the properties consistent with Court Orders, and also, to investigate allegations of misfeasance between the partners. Levi continued to operate the boarding house through until sale. There were considerations whether its best use and value was as a boarding house or otherwise.

Proceeds were distributed to the partners by the receiver.

Huzing & Ors v Carley-Conway & Ors SCNSW 2019/00330593

Case study 4 Palin - s 66G

The land was bequeathed to a brother and sister. Levi and Samakeh were appointed Trustees under s 66G for the sale of two parcels of rural land near Dubbo NSW. One parcel was vacant rural acreage near the edge of town with no electricity or town water but had water rights. The other parcel was acreage with two residential dwellings, occupied by the brother, and littered with obsolete vehicle bodies. We considered with a valuer whether the best use of the land was as is, or alternatively, whether it had potential for rezoning and subdivision. Also, the then Council had had a fire including destruction of its records, and we needed to determine the status on water rights which were likely to affect valuation and market value. We also considered capital gains tax issues and GST issues.

Levi liaised with stakeholders, agents and lawyers to determine and investigate stakeholder issues, and develop and implement a sale strategy consistent with Court Orders. One property was sold by auction. On the second property the sister did not object to her brother retaining occupancy provided a fair commercial settlement occurred. Levi led the out-of-court negotiation between the parties, agreed to cap the Trustees' fees, obtained tax advice to achieve a tax-effective outcome, and achieved a commercial settlement, by consent, between the sister and the brother and their respective advisors and the Court.

Palin v Palin SCNSW 2023/00127011

Legal Factors

We rely on you, as lawyers, to do the legals and make application to the Court. We can provide input into the proposed drafting of orders to ensure that the proposed orders are commercial and efficient and provide consents.

An order by the Court under s66G is discretionary. However, if the application is prepared and presented carefully by lawyers or counsel (you), and consent from experienced trustees (us) is obtained, it is highly likely to succeed, leading to the sale of the property.

The Court will not appoint trustees for sale or order the sale of a property if:

- The co-owners have made a contrary agreement.
- It would be unconscionable to make the orders.
- The co-owners hold the property on trust and the trust instrument contains its own procedure for sale.

Court orders

When a Court orders trustees to be appointed to sell the property, we typically take the following steps to preserve, protect and sell the property:

- Communicate with the parties.
- Familiarise ourselves with the Orders.
- Inspect the property.
- Become registered on title as the property will vest in the trustees.
- Obtain vacant possession of the property if necessary.
- Obtain insurance as the appointment may trigger a default on existing insurance.
- Collect rent, if rented, between the time of appointment and completion of the sale, from any tenants, and lease the property if appropriate.
- Determine the most suitable real estate agent to market and sell the property including the sale strategy.
- Obtain an independent valuation from a registered valuer.
- Monitor the sale campaign, determine interest, set a reserve, attend auction, if being auctioned.
- Conduct investigation if ordered by the Court.
- Outsource preparation of contract of sale, exchange contracts, attend to settlement, pay out costs of sale, mortgages and caveats on title, expenses and fees of the trusteeship, legal costs of the application (if ordered), and distribute net proceeds to co-owners (if ordered).
- Consider tax issues including capital gains tax, goods and services tax, and lodgement of an income tax return for the trustees, if required.
- Attend to any other Orders made by the Court.

Consents - Court practice

The practice of the Court is to require that consents be verified. Verification of a consent involves an affidavit by a witness verifying and deposing that the witness was present and saw the named trustee execute the consent, and that the signature of the trustee and of the witness appearing on the consent are in the handwriting of the trustee.

It is also necessary on an application under s 66G that the fitness of each trustee be established by affidavit whether or not the proposed trustee is a registered liquidator. The affidavit of fitness of a trustee must depose to knowledge and good acquaintance with the proposed trustee, the trustee's occupation and any other relevant matters as to the trustee's experience, that the trustee is of good character and a fit and proper person to be appointed for sale of the land the subject of the proceedings.

Recovering money

As trustees, after the settlement of the sale, the trustees hold the sale proceeds on trust for the co-owners in proportion to their ownership interests. Subject to the Court Orders, we would report to the co-owners and the Court and distribute the net sale proceeds proportionately among the co-owners according to their interests including information related to taxes relevant to the sale.

There can be exceptions and adjustments subject to Orders where a co-owner has:

- Contributed disproportionately to the purchase price or mortgage repayments relative to their interest in the property recorded on the title (eg where one co-owner has paid the entire purchase price or made all the mortgage repayments).
- Paid rates, strata levies or utilities disproportionately to their interest in the property recorded on the title.
- Made improvements to the property that have benefitted all co-owners by increasing the value of the property
- Occupied the property without compensating other co-owners and is liable to pay an occupation fee as a result.

Levi Consulting

Our Service Lines

- Restructuring including safe harbour and small business restructuring
- Insolvency
- Advisory, special situations, trade-on and sale intestate businesses, disputes, s66G

David Levi is a registered liquidator with deep experience in s66G appointments. Levi personnel will consent to act as trustees. s66G prescribes trustees, not trustee.

We practice proportionality in the review of time-costs and communicate costs during the matter to keep the parties focused.

David is supported by an experienced team of professionals.

David is a member of ARITA, AIIP, TMA Australia and CAANZ. He accepts court-appointed s66G appointments, and also, court-appointed receiverships. He is supported by an experienced team of professionals.

David makes himself available to accountants, lawyers and their clients, and also, to business owners. He makes an effort to understand clients' needs and advocates for optimal outcomes.

Seek professional help

When it comes to disputes over selling a co-owned property, it is important to seek professional help and expertise.

Do not hesitate to seek the help of a trustee and also, a lawyer if you are facing a co-ownership dispute. It could save you a lot of time, money, and stress in the long run.

Clarity. Closure. Resolution.

Obtain this booklet and other information via:

- our Contact us page at <https://www.leviconsulting.com.au/contact-us/>; or
- our blogs at <https://www.leviconsulting.com.au/news-insights/>.

Support from Levi Consulting

As always, we remain available for discussion virtually or face-to-face. Reach out to David Levi at 0418 602 466 for a confidential conversation about your unique circumstances.

	Option	When is it suitable?
1	Informal Workout	Whenever informal solutions with creditors are feasible.
2	Members' Voluntary Liquidation, alternatively, corporate simplification	Solvent dissolution of a company that had trading activity.
3	Voluntary Deregistration	Solvent dissolution of a company with no or limited trading activity (e.g. a holding company or dormant company).
4	Voluntary Administration	Key mechanism for businesses in financial distress to explore restructuring or sale options while under the protection of a moratorium.
5	Safe Harbour	A support tool for enabling directors of a distressed company to continue to trade while working on an informal workout or planning for a formal solvency.
6	Deed of Company Arrangement (DOCA) following Voluntary Administration	A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts.
7	Creditors' Scheme of Arrangement	Another flexible formal insolvency restructuring tool - more cumbersome to implement than a DOCA, but with the advantage of being able to bind secured creditors. Ideally suited to financial restructuring of large/complex debt stacks.
8	Small Business Restructuring Plan	For small and micro businesses (less than \$1,000,000 in total debts) - a quick and straightforward alternative to a DOCA.
9	Creditors' Voluntary Liquidation	Best suited to a terminal liquidation of a failed/insolvent company - where an attempt at restructuring through administration and DOCA would be unlikely to work.
10	Court Liquidation	Effective in instances of shareholder/management failure (e.g. in a failed or dysfunctional joint venture). Also commonly used by creditors to attempt to force an involuntary liquidation on a debtor company that has failed to pay its debts.
11	Receivership	A receiver is appointed by the court or alternatively by a secured creditor to take control of all or part of the assets and business of a company or partnership. Court-appointed receivers are common for partnership disputes.
12	Section 66G	When co-owners are in a dispute over jointly owned property the court can appoint trustees using s 66G of the <i>Conveyancing Act 1919</i> (NSW) to sell the property and distribute the proceeds.

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