

David Nicholls

Insolvent co-owners

What is the effect of bankruptcy between co-owners?

- Joint ownership and vesting
- Realising the beneficial interest
- Exceptional circumstances
- Equity of exoneration

Joint ownership and vesting

- Joint tenancy at law
- Joint tenancy / tenants in common in equity
- Express declaration of trust
- Equity follows the law
- Vesting in Trustee – s.306



Realising the beneficial interest (1)

Section 14 – Trusts of Land and Appointment of Trustees Act 1996

Section 335A – Insolvency Act 1986

- Discretion:
 - Creditors
 - Family conduct / needs
 - All circumstances
- Creditors outweigh *unless* ‘exceptional circumstances’



‘Exceptional circumstances’

- Poor health
- Children
- Loss of home
- Education
- Disability
- Proceeds swallowed up



Realising the beneficial interest (2)

- Use or lose it
- 3 years
- £1000
- Sections 336, 337, 338

Equity of exoneration

- Joint ownership
- Co-owners borrow money, secured on the property
- Money is used by one co-owner to pay debts
- Presumption that the other is lending, not giving
- Rebuttable

Armstrong v Onyearu [2018] Ch 137

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
🌐 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers)