

# Etridge - securing business debt against the matrimonial home

## Real Estate

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Most business owners operate with on-going debts. Securing those debts in the most effective way with minimal risk is always challenging for business owners. One option is to use the matrimonial home as security for business debts. This may sound perfectly straightforward but there are very strict rules governing the use of the family home to protect both the lender and the individuals involved.

### What is 'Etridge'?

'Etridge' isn't a 'what'; it's a 'who'. It refers to Mr and Mrs Etridge who featured in a famous House of Lords appeal in 2001 [RBS v Etridge] which forms the basis of all guidelines and procedures for using your matrimonial home to secure business debts.

They apply where the home is jointly owned by a spouse who has no direct involvement with the business that is borrowing the money. The case was essentially about making sure that the spouse fully understands and accepts that his or her home may be lost if borrowing is not repaid. Put another way, he or she is signing up to a debt that they have no control over and get no benefit from and which has to be repaid from his or her asset. The other key element is proving that the spouse is not being put under any pressure to sign – known as 'undue influence'. Any business owner who wants to borrow money in this way must therefore comply with what the lender requires both you and your spouse to do.

### Strict guidelines for solicitors

These cover three stages:

Explaining the solicitor's involvement- why are we involved?

- the bank need us to confirm there is no suggestion of 'undue influence' by the spouse who owns the business
- to make sure your spouse fully understands the implications of the transaction.

Demonstrating we have clear instructions from the wife to proceed

- the lender will require the spouse not involved with the business to have separate legal advice – either by using a different firm or a different solicitor within the same firm
- the bank will send out separate and detailed instructions to that solicitor.

Giving formal advice to the spouse

- advice has to be given face-to-face and should be detailed
- it should be in the absence of the other spouse
- advice should be practical and non-technical to ensure understanding.

### Formal meeting with the spouse

This is not just a technicality. We need to be able to demonstrate that we are acting for the spouse. At the meeting with the spouse we need to go through a very detailed procedure to comply with the guidelines. We have a duty to explain:

- the nature of the documents and the practical consequences of signing the documents (ie the possible loss of home or bankruptcy)
- the seriousness of the risks involved

- the amounts involved
- the principal terms of the loan
- that the bank might increase the amount, change the terms of the facility or grant a new facility without reference to the spouse. This means that the sums involved would change.

It's important that at this meeting we cover all aspects of commitment and the implications if the debt is unpaid. So we will also discuss:

- the spouse's financial position
- the value of the matrimonial property
- any other assets that could be used if problems arose later
- make it clear that the spouse does have a choice in the matter and that the decision to agree and sign is his or hers alone – no one else should influence that decision
- whether or not the spouse still wants to proceed.

The legal fees are the responsibility of the spouse who is not the business owner.

- Legal fees will be incurred by the spouse as compliance with the bank's requirements, which is an integral part of the loan being granted. Banks requirements are structured this way to protect the lender so we cannot alter them. Cost can vary, but the fees are likely to be several hundred Pounds so they need to be budgeted for as part of the process.

If you want to know more about how you can use your matrimonial home to secure business borrowing, contact Caroline Preist on 01225 730153 or email her on [caroline.preist@withyking.co.uk](mailto:caroline.preist@withyking.co.uk)