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Building Projects Over Strong Relationships

LEGAL ALERT - Lending a home is not giving it away for good: the limits of a loan for use for housing

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LEGAL ALERT - Supreme Court on the limits of a loan for use of a family home

Letting a child, a relative or someone close live in a property free of charge is fairly common. Often the arrangement lasts for years, the property becomes the occupant's family home, and works are even carried out with the owners' knowledge and consent.

But what happens when, many years later, the owners want the property back? Does the fact that it was lent as a home prevent its return? And if the occupant has carried out significant works, are they entitled to compensation?

These were some of the questions recently examined by the Portuguese Supreme Court of Justice (STJ) in its judgment of 9 July 2026 (Case No. 7146/20.7T8LRS.L1.S1), a case that shows how important it is to clearly define the duration and terms of a free loan of a property.

The case: a home lent free of charge to a family

In 1995, the owners of a property allowed their son and his wife to live free of charge in a house they owned. The property became the couple's family home.

In 2002, the son died without children. His widow remained in the property and, for several years, the owners peacefully accepted that she continued to live there.

It was also established that the late husband wished his wife to remain in the property until she rebuilt her life with someone else, and that the owners had agreed to her staying on in those circumstances.

Meanwhile, during the marriage and with the owners' consent, the couple carried out several works on the property, including windows, electrics, shutters, garage, roof and painting, totalling €18,455.52.

The situation continued until May 2020, when the owners formally asked for the house to be returned. The occupant refused to hand it over, which gave rise to the dispute.

The legal question: when does a loan for use for housing end?

The core issue was the legal classification and duration of the loan for use agreement (comodato).

Under Article 1129 of the Portuguese Civil Code, a loan for use is a gratuitous contract under which one party hands over a movable or immovable thing to the other for them to use, with the obligation to return it.

In this case, it was undisputed that the property had been lent free of charge as a home. The question was how long the widow could stay.

The occupant argued, in essence, that the loan was for life and that the property being her family home justified her continued occupation.

The owners, in turn, argued that the loan could be terminated and that, once its return had been demanded, the occupant was required to hand the property back.

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The Supreme Court's decision

The STJ found that this was a loan for use with no fixed term, given the temporary and precarious nature of this type of contract.

According to the Court, using the property as a home, without a sufficiently precise time limit, does not prevent the application of Article 1137(2) of the Civil Code. The property must therefore be returned when the lenders demand it.

The fact that the property is the family home does not, in itself, turn the loan into a lifelong right of occupation. The Court also rejected reliance on Article 67 of the Constitution, noting that no genuine right of use and habitation in favour of the occupant had been established.

In this case, the property was ordered to be returned to the owners within six months of the decision becoming final.

What about the works carried out?

The case also concerned possible compensation for the works carried out by the couple, with the owners' consent, worth €18,455.52.

Under Articles 1138 and 1273 of the Civil Code, useful improvements may be removed where this is possible without damaging the property. Where removal is not possible, any compensation is calculated under the rules on unjust enrichment.

The Court therefore highlighted a particularly important point: the amount spent on works does not necessarily match the compensation due. It must be alleged and proven how far the improvements actually increased the property's value and, consequently, how much the owner was enriched. As that increase in value was neither alleged nor proven, compensation was refused.

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Key takeaways

This decision shows the importance of clearly defining, even within family relationships, the basis of occupation, the duration of the arrangement, the conditions for returning the property and the rules applicable to any works carried out.

Formalising these arrangements should not be seen as a sign of mistrust. On the contrary, it protects everyone involved and prevents future disputes, especially when an arrangement that started as temporary lasts for many years or when significant investments are made in the property.

Within a family, trust does not replace legal certainty.

- Diana Magalhães Lopes

How MATLAW can help

Have you lent a property to a relative, or do you live in a home that was lent to you? MATLAW helps formalise the arrangement, setting its duration, the conditions for return and the rules on works, and supports you in resolving disputes when the situation has dragged on.

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