

GUIDE TO PURCHASING PROPERTY WITH OTHERS



Welcome to Law North and Swift's
GUIDE TO PURCHASING PROPERTY WITH OTHERS.

It is becoming more and more common to purchase property with people other than your partner. It could be parents helping to get children into the market or friends looking to pool funds to get ahead. Whatever the reason, it is important you have the right legal documentation in place to avoid any disputes or issues down the track.

IMPORTANT

We can give advice on the legal aspects of the purchase, but we are not qualified to advise on the financial merit of the transaction.

INTRODUCTION

Purchasing property with shared ownership is becoming very common. This can be two or more business partners or friends or members of a family.

This summary explains some of the issues that arise in these situations. This summary does not cover spouses or relationship partners purchasing property together, which has a complete different set of issues to consider under the Property (Relationships) Act 1976.

It is essential when purchasing the property that everybody considers the issues that will arise and how they will be dealt with in advance rather than leave them to possibly become an ugly dispute later.

The areas that need to be considered are covered below.

Sharing

With more than one owner there will be some form of sharing of the property. It could be as simple as “we will own half of the property each and share equally in any costs or profit”. However, in most cases, an agreement needs to go a lot further and consider items such as:

- Who will occupy the property? If both parties are occupying the property, what buildings or areas of the property they will occupy?
- Who will meet outgoings such as rates and utility costs?
- Who is responsible for any borrowings?
- How is maintenance of the property to be dealt with especially if there are buildings involved?
- If one party is building on the land, what controls are there?
- How will disputes be handled?
- What happens if one person loses their job? Is there a buy out provision?

In family situations, it often becomes more complex and there is a need to consider the effect of the Property (Relationships) Act, estate claims, etc.

Family Issues

It is not uncommon for members of a family to purchase property for joint occupation, e.g. a child and parents. In this case, it is important that the above matters are considered, but also specific family issues that may involve relationship property and wills, etc.



Borrowings and Uneven Contributions

If there are borrowings secured by mortgage over the property, which party is responsible and what occurs if that party defaults. The lender may require personal guarantees, which will mean owners could be cross-guaranteeing each other's debt. Rules need to be agreed as to how this is dealt with. If the amount contributed is not equal this needs to be covered in the rules.

You should also consider mortgage liability, although you only own a percentage of the house, you will still be liable for the whole mortgage. Your credit history will now also be linked to your co-owners due to the joint mortgage. The calculation the banks will use if you wish to borrow against your share of the property in the future is also tricky, as they will only count your share as an asset, but they will count the whole mortgage as a liability, which could restrict you borrowing more money.

Relationship Property

This summary is not intended to cover the situation between spouses and relationship partners. But relationship property still needs to be considered – for example - if two siblings or friends purchase a property together, and one of them is in a relationship, does a partner or spouse also own a share under the Property (Relationships) Act 1976?

We recommend a contracting out agreement to avoid confusion or as we advised earlier a difficult dispute.

Estate Issues

Just making a will setting out what is intended for the property may not protect the rest of the owners. **For example only** - the property may need to be sold to pay others who have a claim on the estate. It is imperative that legal advice is taken around this issue. If not detailed correctly in a Will it may also trigger Brightline Tax issues if the property needs to be sold to the co-owner.

Summary

The above is a brief outline of some important issues when buying a property with co-owners. There may be other issues specific to your transaction, however these are the main points that need to be considered and discussed with us.

Our advice is that without all the relevant documents in place, the potential for what can become a disastrous dispute is high.



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