

# Property co-ownership: The good, the bad and the letter of the law

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For first-time buyers, property co-ownership may be the easiest and most affordable way to enter the property market. For others too, it can be an accessible way to extend an existing property portfolio.



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As with any business transaction, it is important to carefully consider the advantages and potential drawbacks of the arrangement, as well as come to a transparent agreement (in writing!) with the co-owner(s).

## The good

The benefits of property co-ownership is somewhat obvious. You're only responsible for an agreed-upon percentage of the monthly bond repayments. Similarly, the cost of maintaining the property is also shared. Decide on the split, both in terms of ownership and financial responsibility, as soon as a suitable purchase has been decided on.

Do note though that while the purchasers decide on their respective share of the property, and which will be recorded as such in the title deeds and registered at the Deeds Office, the institution that grants the loan will expect that all parties sign to be 'jointly and severally' liable for the repayment of the loan. This means that the mortgagee is entitled to recover the whole amount from any one of the co-owners if there is a default on the regular payments.

## The bad

Disputes and pitfalls usually arise as a result of one of two major factors; when one of the owners default on their monthly bond repayments, or cannot afford to contribute their share to the routine maintenance of the property. Another common reason for tension and disagreements is when one of the partners wants to sell their share in the property.

It is essential to seek legal counsel around these matters, but even more important to have a co-ownership agreement drawn up when entering into such a transaction. While a lawyer needs to draw up the contract, a trusted property advisor can guide and advise you on how to structure the agreement to protect and promote the interest of all parties involved.

## And the letter of the law

While it's up to the owners to stipulate the contents and scope of the agreement, it's rather essential that the contract makes provision for the following factors and eventualities:

- Which of the owners (if any) will occupy the property?
- What happens in the case of death of one of the partners?
- What if one of the parties wants to sell the property and the other doesn't?
- What happens in a case where one of the co-owners defaults on the monthly bond repayments?
- Should the property be sold, how will the potential profits or losses be divided?
- Who is responsible for securing financing for the property?
- What happens if one party is able to contribute to a deposit and the other can't?
- How is the responsibility of property maintenance to be divided?
- How will the monthly costs such as municipal rates and property taxes be paid?
- Are any of the co-owners allowed to use the property as collateral for another loan, or permitted to draw from the access loan?

It is best to come to an agreement on these considerations before purchasing the property as a roadmap for the way forward, rather than trying to navigate murky waters once you've left the safety of the shore.

Property investments should not be taken lightly. The backlash of an investment gone wrong can be very expensive and best avoided. But, approached with open and reasonable expectations, it can be a very worthy and rewarding investment.

## ABOUT BRUCE SWAIN

Bruce Swain is the CEO of Leapfrog Property Group.

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