Legal Steps for Buying Joint Ownership Properties

Owning property is a long-term dream for many, whether it's for setting up a business, leasing it out, or simply for personal use. When it comes to buying property, you generally have two main options: purchasing it outright on your own or partnering with someone else to make a joint purchase.

When you decide to buy a property with another person, this arrangement is legally known as "joint ownership." This choice can be influenced by various factors, such as financial constraints, shared investment goals, or simply a personal preference.

This article will dive deep into the concept of joint ownership and cover the following:

- What is joint ownership and the steps involved
- Types of joint ownership
- The various legal rights of joint property owners
- The risks involved in this type of property ownership.

Meaning and Types of Joint Ownership

Joint ownership is the process of buying a property together with another person or group of people. Under property law, when two to four people are legal owners of a property, they are all regarded as joint owners and have certain rights over such property.
Typically, there are two types of joint ownership: "joint tenancy" and "tenants in common."

Joint Tenancy

In this type of joint ownership, the individuals who own the property all have equal shares and deeds on the property. While this type of arrangement can be created by anybody, it is more favourable for people who have a very close relationship with one another, such as married couples, friends, and family members.

Joint tenancy offers several advantages and disadvantages. One of the main benefits is the right of survivorship, which means that if one owner passes away, their share automatically transfers to the surviving owner(s). While joint tenants share equal rights over the property, they are also equally responsible for its maintenance, such as paying the mortgage, taxes, and handling repairs.

However, a significant downside is that selling the property can be complicated since all parties must agree before any action can be taken, potentially causing delays. Additionally, unlike other ownership forms, joint tenancy doesn't allow the deceased owner to pass their share to a chosen heir, as it will be automatically allocated to the surviving co-owner(s).

The four essential elements that must be present in joint tenancy, known as the "four unities," are:

- **Unity of Title**: All co-owners must acquire their interest under the same title or deed.
- **Unity of Time:** All co-owners must acquire their ownership at the same time.
- **Unity of Interest:** All co-owners must have an equal share in the property.
- **Unity of Possession:** All co-owners have equal rights to possess and use the entire property.

Tenancy in Common (TIC)

Under this ownership arrangement, the owners can own different percentages of shares on the property. Additionally, unlike joint tenancy, which has unity of time, members in TIC are not mandated to acquire their ownership at the same time. They can also sell their share to another person in or outside the tenancy agreement at any given time without seeking permission from the other owners.

One of the key advantages of TIC is that co-owners can hold different percentages of ownership in the property, allowing flexibility based on each person's investment. Additionally, TIC allows new members to join the ownership agreement even after the original tenants have entered into it. Unlike joint tenancy, there is no right of survivorship, meaning that if a tenant dies, their share is passed on to their estate and can be willed to their chosen heirs. However, TIC also has drawbacks, as all tenants are equally liable for the property's debts and taxes, regardless of their ownership percentage.

Choosing the Right Type

When selecting the most suitable type of ownership, you must consider several factors, including your long-term goals, legal preferences, how you want the property to be used, and more.
For example, if you are married, you may consider joint tenancy because you and your partner will have equal ownership and rights. Also, if, unfortunately, one of you dies, the property will be transferred to your surviving spouse without court intervention.

In contrast, if you want to hold a distinct ownership share of the property, be responsible for your own taxes and debts, and have the flexibility to sell, buy, or borrow against your share, then tenancy in common might be the best option for you.

Ultimately, it's best to consult with a legal professional to determine the best ownership type that will align with your immediate needs and long-term plans.

Legal Considerations for Joint Ownership

When entering into a joint property ownership arrangement, it's important to understand the legal aspects involved. These considerations will help define your rights and responsibilities as a

co-owner, prevent future disputes, and ensure smooth property management. Here are some key legal considerations to keep in mind:

- **Ownership Rights and Responsibilities**: In joint ownership, all tenants have equal rights to use and enjoy the property, regardless of their individual financial contributions. This also means they share equal responsibilities for the property's maintenance, taxes, and any associated costs. When it's time to make decisions about selling or leasing the entire property, all co-owners must be involved.
- **Dispute between co-owners**: Disagreements about property usage, maintenance duties, or future plans are normal among co-owners. To avoid these disputes from escalating, it's essential to establish a clear legal agreement, such as a co-ownership or shareholder agreement, which outlines roles, responsibilities, and guidelines for selling shares or the entire property.
- **Inheritance Implications**: In joint ownership, inheritance rules differ based on the type of ownership. For example, with joint tenancy, the right of survivorship means that if one owner dies, their share automatically passes to the surviving co-owners, regardless of any will. This means the deceased owner's share cannot be willed to someone else. In contrast, tenancy in common allows each owner to pass their share to chosen heirs through their will.

Steps for Buying a Joint Ownership Property

If you've decided to buy a property with others, following these steps can help ensure a smooth joint ownership process:

- ➢ **Step 1: Mortgage application**: The first step is to apply for a mortgage, as co-owners are jointly responsible for the loan. Lenders will then evaluate the financial status of all parties involved to determine eligibility and loan terms.
- ➢ **Step 2: Draft a co-ownership agreement**. After the mortgage has been approved, the next step is to draft a co-ownership agreement/shareholder agreement outlining each party's financial contributions, responsibilities, and ownership rights to avoid future conflicts.
- ➢ **Step 3: Property survey and valuation:** Conduct a property survey and valuation to ensure all co-owners are aware of the property's condition and value before completing the purchase.
- ➢ **Step 4: Conveyancing process:** The final step is to hire a solicitor to handle the conveyancing process. This process ensures the legal transfer of ownership and property registration under all co-owners names with the HM Land Registry.

How Co-Owners' Interest Can Be Protected

When entering into a joint ownership agreement, it's important to ensure that all co-owners interests are protected to prevent potential disputes, financial risks, or complications that could arise in the future. Here are some key ways to protect the interests of all parties involved:

- **Deed of trust:** A deed of trust is a legal, binding document used in both tenancy in common and joint tenancy that outlines the rights and privileges each tenant will enjoy in the

agreement. This document also establishes the right of survivorship and the percentage of shares each co-owner owns.

- **Insurance considerations**: It is also essential to secure the appropriate home and mortgage insurance that reflects the joint ownership arrangement. This will help protect all parties from unforeseen events.
- **Exit Strategy**: Another way to protect yourself and other co-owners is to have a clear exit strategy in the co-ownership agreement. This clause outlines what happens if one party wants to sell their share or if the relationship between co-owners changes, thus preventing future disputes.

Challenges and Risks of Joint Ownership

Every major life decision carries risks, and purchasing property with others is no exception. Joint ownership can present unique challenges that all parties should know before entering such an arrangement. Here are some of the most common risks associated:

- **Financial responsibility:** Joint ownership comes with significant financial risks, especially if one co-owner cannot meet their mortgage obligations. In such cases, the remaining co-owners are often responsible for covering the shortfall, which can lead to financial strain or even foreclosure if payments are not made.

- **Legal liabilities:** Co-owners share legal liabilities, meaning that if one party defaults on payments or becomes involved in legal disputes, the other co-owners may also be affected, even if they were not directly involved. To help mitigate this risk, it is essential that their co-ownership agreement contain clauses on how to manage these risks.

- **Disputes over sale or use:** Disagreement over how the property will be used, managed, or when to sell it may arise among the co-owners. To avoid such conflicts, it is vital to include a clause in the co-ownership agreement outlining how decisions on the property can be made and who can make them.

Best Practices for Joint Ownership Buyers

Purchasing property with others can be a rewarding investment, but it requires careful planning and communication to avoid potential issues. Here are some best practices to follow to ensure a smooth joint ownership experience:

- **Clear communication:** Open and frequent communication is crucial when buying a property with a partner or multiple parties. Discuss important aspects, such as how the property will be financed, managed, and used to avoid misunderstandings or conflicts down the line. Establishing clear expectations early on can prevent future disagreements and ensure everyone is on the same page.

- **Legal documentation:** Before completing the purchase, make sure all necessary legal documents, such as a co-ownership agreement and mortgage terms, are in place. This provides a solid legal framework that outlines ownership rights, responsibilities, financial contributions, and how potential disputes will be handled.

- **Regular reviews of ownership agreements:** Joint ownership is not a static arrangement, so it's essential to review and update your co-ownership agreement regularly. For example, if a new member joins or if there are changes in financial contributions, the agreement should be adjusted to reflect these changes.

Legal and Regulatory Considerations

In the UK, property law allows up to four people to be named as legal owners of a jointly owned property. If more than four individuals are involved, their ownership is managed through a trust arrangement. This means that while only four people can be registered as legal owners, the others can still have an interest in the property via the trust. Additionally, if one of the co-owners loses the capacity to make decisions (e.g., due to illness or disability), and the property must be sold, it's legally required to apply to the Court of Protection to proceed with the sale.

Joint ownership in the UK is governed by laws such as the **Land Registration Act 2002**, which mandates that the property must be correctly registered with the HM Land Registry. Proper registration ensures transparency in the ownership structure and safeguards the rights of all parties involved.

Tax Implications

- **Capital Gains Tax (CGT):** If joint owners decide to sell the property, they may be subject to Capital Gains Tax on any profit made from the sale. However, CGT exemptions might apply if the property is the primary residence of the owners.
- **Stamp Duty Land Tax (SDLT):** Co-owners must pay SDLT based on the property's value at the time of purchase. However, the rate depends on the property price and if the buyers already own other properties.
- **Income Tax:** If the property is rented out, co-owners may also be subject to income tax. This tax is not paid by one owner, though; instead, it is divided according to their share of ownership.

It is essential to consult legal professionals who fully understand the implications of joint ownership to ensure compliance with the UK rules and regulations regarding joint ownership.

FAQs

Joint tenancy vs. tenancy in common, what do they have in common?
In joint tenancy, all owners have equal shares, and there is also a right of survivorship. In contrast, tenancy in common allows owners to have unequal shares, and there is no right of survivorship.

Do co-owners have to contribute equally to the mortgage?
While all the co-owners will be responsible for paying the mortgage, they are not mandated to contribute equally. Instead, their contributions will be based on individual agreements, as reflected in the co-ownership agreement they signed.

Can one joint owner sell the property without the other's consent?
In a joint tenancy, one co-owner cannot sell the property without the other's consent. In a tenancy in common, an owner can sell their share but not the entire property without the agreement of the other co-owners.

What happens if one co-owner dies?
The deceased owner's share automatically transfers to the surviving co-owners in joint tenancy. In a tenancy in common, the deceased owner's share is passed on according to their will or estate plan.

How can joint owners protect their individual financial interests?
Joint owners can protect their financial interests by drafting a co-ownership agreement that outlines their rights and responsibilities, exit strategies, and individual financial contributions to the property.

Conclusion

Now that you have a clear understanding of the different types of joint ownership, the legal rights and responsibilities of co-owners, and the potential risks involved, it's important to carefully evaluate which option best aligns with your needs and long-term goals.

If you're planning to enter into a joint ownership arrangement and require professional guidance, our team at LawHive is here to assist you. Our solicitors can offer expert advice on all aspects of joint ownership, including drafting co-ownership agreements, handling property registration with the Land Registry, and managing related paperwork.
Contact us today and let us help you secure your property rights.