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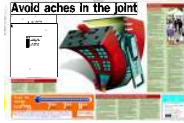
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INSIDE YourMoney

Avoid joint pain

How to become property partners
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Illustration: Braden Hill



Avoid aches in the joint

Joining with friends or family to break into the property market can be a great idea but don't skimp on the paperwork. **WENDY MASON** reports.

EVERYBODY'S doing it. Joint home ownership, not with your life partner but with your sibling, friend, relative.

For many people it is a great way to get a toe-hold in the property market but as with everything, there's a right way and a wrong way to go about it.

Using the right legal framework can save partners from financial and emotional turmoil if things go pear-shaped.

Enter the co-ownership agreement — a legally binding document that sets out the rights and obligations of each person who has a share in the property.

A co-ownership agreement protects everyone's interests and deals with all the issues upfront, including what happens when someone wants out or if they default on the mortgage.

Irrespective of how you want to buy the property, whether it be as owner occupier or investment it should be done within a secure legal framework according to Pod-Property director Jeremy Levitt.

A co-ownership agreement is not compulsory but it can help avoid a trip to the Victorian Civil and Administrative Tribunal (VCAT), or an expensive court battle when issues arise.

There are also a number of issues to consider before, and after, you buy a property with other people.

The first step is to make sure each partner can make the loan repayments, according to Harwood Andrews lawyer Vittoria De Stefano.

Loan structure

While a lender might structure the loan so that each borrower can have a separate loan account, the lender might also require that the borrowers each sign guarantees.

This means that they will be jointly liable for each other's obligations under the loan agreement.

If a co-owner does default, and the other partners are unable to cover the shortfall, the lender could come in and sell the entire property to recover the amount outstanding, Ms De Stefano said.

Partners can also take out mortgage protection insurance to help protect them from losing a home when someone defaults in circumstances covered by the insurance policy.



The right legal framework can save partners from financial and emotional turmoil

First home grant

Another issue to consider is the First Home Owners grant. To claim the grant, each buyer must be eligible for it.

If one co-owner has owned property before, then the other co-owner will not be entitled to the first home owner grant. Although this is not necessarily a "deal breaker" it needs to be considered by the buyers and dealt with in fair way between the partners.

After all, one partner could be giving up the benefit of receiving thousands of dollars that they would otherwise have been entitled to.

Your will

After you have purchased the property, be sure to review your will to include your share of the property so that it will pass to the people you nominate, Ms De Stefano said.

Depending on the type of agreement or title you have (such as

joint or tenants in common) the interest that someone has in a shared ownership home will not automatically transfer to the other co-owners.

Expenses

Keep detailed records of who pays the rates and insurance so that if you do get into a dispute, you have that evidence to take to VCAT.

Similarly, if you are doing renovations each co-owner needs to keep records of what they spend.

Co-ownership agreements are not compulsory and people might not want to enter into something as formal as that when they buy. However, you need to be aware of what could be in dispute later on.

It's also possible that a co-owner might dispute an agreement further down the track.

The cost of a co-ownership agreement varies depending if you get an "off the shelf" version or one specifically for your situation. Solicitors fees vary, but are usually about \$750 upward but can cost thousands of dollars.

Organisations such as Pod-Property charge less, for example \$350 per co-owner for a standard 37-page agreement and advice. Extra legal advice and new clauses costs about \$250 an hour.

Disputes

A contract between co-owners is enforceable but it doesn't mean that one of the other parties might break it. If someone suffers a loss it can still go to VCAT.

While VCAT will look at the co-ownership agreement and what the parties intended when it was signed, there might be other evidence from an aggrieved co-owner the tribunal can consider.

VCAT can make any order that is just and reasonable.

When a co-owner wants to opt out and have their share purchased by other co-owners, the acquiring co-owners must pay stamp duty on the share they buy at market value.



What is co-ownership?

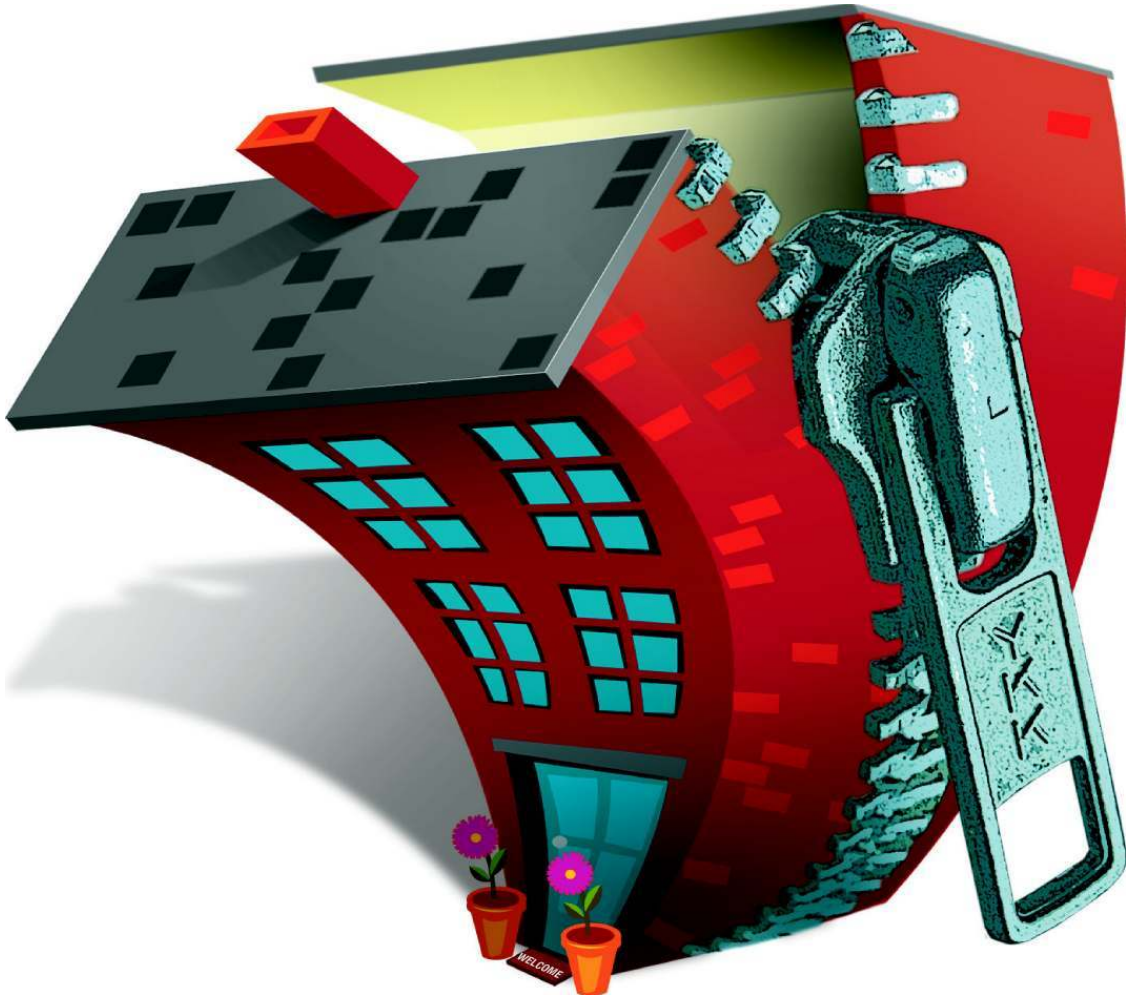
Co-ownership is where two or more people share the cost of buying a property, including the deposit, establishing and repaying the loan and the ongoing costs such as rates and insurance.

The most common way for

multiple owners to set up a co-ownership of property is through a tenancy in common agreement where each individual has a share in the property that they can sell or will to whoever they choose.

By using a co-ownership

agreement with a tenants in common agreement partners can make and specify exact rules. Co-ownership agreements can cover many different types of relationships including groups of friends, family members and de facto partners.





Split decisions

What's covered in a co-ownership agreement?

It can include an indemnity for each co-owner against liability caused by one of the other owners to meet their mortgage obligations.

A way of dividing up any profits or losses when the property is sold.

Rules about people other than the owners living at the property.

Obligations on each person to pay their share of the mortgage on time

Rules about splitting expenses.

Setting up a committee or procedures for making decisions.

Rules about protecting owners against default by fellow owners.

Rules about how to sell out or what happens when one person wants to leave and the others don't.

Provisions and methods to work out a fair market value in case someone wants to sell out.

A dispute resolution clause to quickly resolve disagreements.

Source: PodProperty

Settling disputes

What happens when there is a dispute? The Victorian Civil and Administrative Tribunal (VCAT) hears disputes between co-owners and parties can represent themselves.

Between 2006 and 2007 VCAT handled around 50 co-ownership property disputes.

It can make orders, which include that land be sold and the sale proceeds divided or partition (division) of the title.

Aggrieved co-owners may obtain an order for accounting and compensation from another co-owner.

Compensation can include the cost of rates, insurance, mortgage repayments and contribution to the purchase price or deposit.

In the majority of cases the parties were disputing whether the property should be sold, VCAT principal registrar Richard O'Keefe said.

"Where you have someone refusing to vacate the place and it is getting messy, VCAT has ordered for the property to be sold," he said.

In such cases VCAT can also appoint an agent and a legal firm, to conduct the sale.

On a number of occasions the principal registrar has been required to sign the transfer of land documents and the sale of land documents in the place of one of the co-owners who refused to sign, to enable the property to be sold.

The Family Court, Supreme and County courts also have property dispute jurisdictions.

Finding a co-owner

Deciding to buy a home or property with someone is similar to choosing a business partner.

Wakelin Property Advisory director Monique Wakelin said a co-owner should be financially stable and transparent about his or her financial commitments.

If you are planning to live in the home make sure you can respect each other's personal space and that you have a compatible personality and lifestyle.

You don't want to live with someone who has a menagerie of animals you're allergic to.

Once the decision to co-buy has been made all the parties need to be assessed for their borrowing capacity, as individuals and then as a group.

Seek pre-approval for your loan, in whatever combination, as it is not always for equal shares.

Research what sort of property the total amount of money will buy.

Once the groundwork is in place, go back to the drawing board and check that it is still a feasible for everyone to go ahead.

Up until now it hasn't cost them any money.

The next step is to get the legal agreement drawn up with a solicitor who is mutually agreed on and who can act impartially.

The absolute worst case scenario is that people who want to do this sort of thing as co-owners do it over a handshake across the kitchen table. It is a recipe for disaster.

If someone gets into financial difficulty or changes their mind half way through the process, then you end up with litigation because there is no exit strategy.

A lawyer will help the parties do the transaction and the agreement, which must very clear about the responsibilities the parties have to each other.



Shared vision: splitting the costs of buying a house.

Co-ownership agreements in spousal relationships

THERE is also a growing awareness of the need for a co-ownership agreement in relationships.

The largest percentage of people making inquiries for a co-ownership agreement are de facto couples and people living in blended family arrangements, according to Alan Rosendorff, a partner at Rosendorff Lawyers.

"It's a good idea to have an agreement in place, especially where people live together as spouses and contribute to the finances of the relationship on a more or less equal basis," he said.

"Spouse" in this case includes same sex couples and de facto partners living together on a bona fide domestic basis.

Mr Rosendorff said older and wiser clients who were entering into second and third relationships were more likely to rely on an agreement. Many of them had been burnt in failed relationships that has been adjudicated on by the courts.

Any party who is married, de facto or in a domestic relationship must obtain a solicitor's certificate to make sure independent advice was available when the agreement was made.

A solicitor's certificate should also include a statement that each party had independent advice about the effect of the agreement on their rights as well as the advantages and

disadvantages of the agreement.

While binding, it is also subject to judicial discretion. The parties might have the best intentions in the world of abiding by the terms of the agreement when it is made, but the matrimonial courts have the power to alter the arrangements.

To be acceptable to a court the agreement has to be fair and equitable to both parties.

"Even if not ultimately upheld, it's worth having an agreement in place. At the very least, they create an argument and at the very best they are enforceable," Mr Rosendorff said.

"If problems arise, it is generally while it is being drafted. That's because of the rigmarole that is attached to finalising these agreements."

Mr Rosendorff said property buyers who were not in a spousal relationship could consider using a commercial joint-venture agreement to buy a property. This is the same as being shareholders in a private company or unit holders in a unit trust.

This agreement will not only protect their respective interests, but will also come to grips with mortgage repayments and disposal of property on termination of the project. A solicitor's certificate is not required for this type of co-ownership.