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## **Is it better to be joint owners or tenants in common?**

*WHAT TO DO: Andrew Quinn / February 18, 2009*

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### **I am buying a house with my sister. Is it better to buy it as joint owners or tenants in common?**

Deciding on an appropriate ownership structure is a critical step that depends largely on your personal situation. It is therefore essential to get professional financial and legal advice.

Tenancy in common is a very flexible form of property ownership that allows two or more parties to own property together. You can split the ownership into unequal proportions, bequeath your interest to someone other than the co-owner(s) and set down the exact rights and obligations of each party in an ownership agreement.

In contrast, joint tenants own the entire interest in the property together, not as individuals.

The other critical difference is that joint tenants have survivorship rights. If one owner dies, their share of the property automatically passes to the other partner. This type of ownership structure therefore tends to be more common among married couples and families.

As both forms of ownership have advantages and disadvantages, it is vital that you discuss your situation with a lawyer to decide which is more appropriate in your case.

There are a few other points you should consider as well.

First, no matter what holding structure you choose, people's circumstances change and that can lead to disputes. For example, you may want to sell or renovate the property but your sister may not.

Second, there are important issues relating to family law, the risk of bankruptcy, tax and estate planning that need to be examined.

Third, if you intend to be co-borrowers, you will be jointly and severally liable for each other's debts. That means you could end up paying your sister's share of the loan if she cannot meet her repayments.

### **I am considering going guarantor for my son in relation to a business loan. What information should I get from him and from the lender before I proceed?**

Acting as guarantor for a loan is a very significant responsibility because you are essentially promising to repay the debt if the borrower does not fulfil their side of the deal. It is therefore imperative to seek professional advice on your particular situation before making any final decisions.

While there are many financial and legal aspects to consider. The most important one is to know how your son intends to repay the loan.

Does he have a regular source of income? Or will it depend on the success of the business? The fact that a guarantee is being sought at all may mean that the lender has doubts about whether the repayments can be met.

It is easy to feel pressured into acting as guarantor where a family member is involved, but you should be aware that you will have very few rights and plenty of obligations once you sign on the dotted line.

If things go wrong, you will have no rights over the assets of the business and your borrowing capacity and credit record may be compromised. In a worst-case scenario, you could be forced to sell your own assets to repay the loan.

If a guarantee is absolutely necessary, you should seek to limit your risk as much as possible.

First, find out what type of guarantee is being sought. Is it for a fixed amount of money or all monies owed? If it is for a fixed amount, you must make sure the contract clearly states this amount and that the guaranteed amount cannot be changed without your consent.

You also need to understand and be comfortable with the key terms of the loan, particularly the interest rate, term of the loan and repayment schedule. If you are guaranteeing a loan which does not require regular repayments, such as

a line of credit, your responsibilities could potentially go on forever.

While you can change your mind about going guarantor in limited circumstances, as long as the lender has not provided any money under the contract, it is far better to have made an informed decision well before this point of time.

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*This advice is of a general nature only. You should consider the appropriateness of this information in light of your own circumstances.*

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