

## Family Investment in Housing (*ref 06*)

A family or other relatives may be able to provide housing directly. This *factsheet* outlines the main options. It is **not** exhaustive.

1. Outright Purchase - or to rent, to be inherited or put in trust (5,6 and 7 below).
2. Shared Ownership privately financed - parents fund part of the cost of a Shared Ownership home - part rent, part buy.
3. Joint Ownership with other families or individuals - a group of families pool resources to buy an existing property or build new.
4. Company Ownership - a group or people, form a company to buy or build. This is a useful option for larger groups who can even build a block of flats.
5. Buy to Rent - a property is purchased for renting.
6. Inheritance - a property is directly inherited. A variant is for the property to be sold and proceeds used to buy property outright or on Shared Ownership terms.
7. Property in a Discretionary Trust - instead of direct inheritance the property is put into a Trust.

We explain each in turn outlining strengths and weaknesses and answering some of the questions most commonly asked.

### 1. Outright Purchase

Better off relatives may be able to buy a property, without borrowing, for their son or daughter to live in. This might be treated as a long term investment and the son or daughter lives rent free or, if they have an income, might pay a modest rent. In the long term the property could be:

- Inherited on death of parent
- Put into a Trust Gifted to a son/daughter now
- Gifted to third party such as a Housing Association

Some of the issues which are dealt with in more detail are:

- The tax implications on which expert advice is required
- As your principle home it does not count as an asset or savings for the purpose of calculating entitlement to welfare benefits
- How the property is managed and maintained in the longer term
- Trustees employing a managing agent, a local Housing Association for example for management and maintenance
- Leasing or gifting the property to another organisation

Why do people gift or lease a property to a third party: a Housing Association or relevant local charity?

There are usually several reasons:

- to deal with management and maintenance of the property
- to ensure there is another organisation to look after their relative
- to help ensure any sharing arrangements are managed properly
- to offer alternative housing if needs change or someone wants a move

Gifts or disposals like this are usually made on the basis of various understandings about what the recipient will endeavour to do and provide in the future. They will probably agree for example that the gifted property or an alternative more suitable property will be provided, managed and maintained for life.

## 2. Shared Ownership – privately financed

In the mainstream part-buy, part rent programme offered by some Housing Associations part of the property is bought by the occupier and part rented from the association. Housing benefit may be payable on the rent and the purchased share eligible for Income Support Mortgage Interest (ISMI). Another option is for the part purchased to be funded by relatives rather than ISMI. It is also possible for parents to substitute their money for Social Housing Grant from the Housing Corporation, which is used in combination with a loan by the housing association to fund the part they retain. This creates a privately financed Shared Ownership option, which is often more flexible than the Housing Corporation regulated model.

Relatively few organisations offer this eg Advance Housing and Support Ltd and Golden Lane Housing. An example works like this:

### Privately financed Shared Ownership – Funding Arrangements

- Individual takes out mortgage funded through ISMI up to £100,000
- Relatives fund around 30% of total cost through a loan to the Housing Association
- Housing Association meets balance of cost of property by borrowing
- The rent charged re-pays the association loan

The **advantages** of this model, apart from those that apply to all Shared Ownership, are essentially freedom of restrictions that apply to Housing Corporation funded Shared Ownership which include:

- No cost limits allowing higher design standards, better location, size and type
- No restriction because of the size of Housing Corporation programme – only the association's ability to borrow
- No waiting for Housing Corporation allocations – can move more quickly
- Less bureaucratic - only association/charity rules to be met
- No Housing Corporation tests of value for money

The big advantage of course is that Shared Ownership may be a route to getting the right type, size, location of property at much less than the cost of outright purchase if that is the only alternative. The **disadvantages** include:

- Using Social Housing Grant is means no cost to the family.
- In the loan model parents will be offered a third legal charge. The first charge will be taken by the mortgage provider to son/daughter. The second charge will be taken by the lender to the association or charity.
- Return on the loan maybe low - not an attractive investment although the son/daughter will share in any increase in property value.
- Rents may be higher than with Social Housing Grant subsidy - but if housing benefit pays the rent this is probably not a significant issue.

The common questions are:

- Can the shared owner i.e the son/daughter, have other people to live with them? The answer is yes. There can be a group of two or three people, the shared owners, who jointly own the property between them i.e. joint ownership and Shared Ownership combined. Alternatively, if the lease allows, the shared owner could let a room to another person: a support tenant or another disabled person.
- Can a family do Shared Ownership without working with a Housing Association or charity? The short answer is yes because the Housing Benefit regulations now allow the shared owner to get Housing Benefit on the rental element of any shared ownership lease. This is a recent change which was brought in to allow private developers to provide shared ownership. It is, as far as we know, as yet unused by families and so is untested ground. There is the possibility that Housing Benefit departments may look at the rental part of shared ownership leases set up by families to check whether they feel they are 'commercial' or set up to take advantage of housing benefit – for more on this see item 5 below.

### **3. Joint Ownership**

Joint Ownership is where a group of people pool their resources to buy a property between them. This could be a group of families coming together to acquire a property for their children to share. Commonly, the individuals who will live in the property already know each other and are friends.

Anybody who buys a house with a mortgage in conjunction with a husband or wife or partner is technically likely to be a 'joint owner'. This means they will be 'jointly and severally' liable for loan repayments. That is to say if one ceases to pay the mortgage for any reason the other remains liable for all the repayments, not just half.

Joint Ownership is therefore commonplace. It is usual for two people to be joint owners but in legal terms it is equally simple for up to four people to be joint owners. There can be more than four joint owners but this is much more complex.

- It is possible if unusual, if they have the resources, for up to four disabled people to be the joint owners rather than the parents (or other relatives).
- Where the owners are parents, those who live in the property will be tenants.

The real question in a joint ownership model where parents are the owners is often 'how can we get our money out?'. An issue that arises where groups share a single dwelling is what happens if one person wants or needs to move on?

This needs agreement prior to setting up joint arrangements. All parties must go into the arrangements on the basis this will be each person's permanent home. No one individual or family must be able to undermine the living arrangements or make the other sharers homeless. As a consequence all the parties should agree no family is able to withdraw their funds unless three conditions are met:

- There is another family/individual able to replace the funding which one of the families is taking out
- The individual who is to move in must want to share with those already living in the house and be compatible
- The person moving in must be acceptable to those already living there

These conditions are usually obvious to those considering this option and would be a concern to any care provider, or social services commissioner. They do, however, tend to limit the circumstances where joint ownership is acceptable to all parties.

It is possible to be joint owners of a Shared Ownership property. So, for example, a couple or two unrelated people who want to share a house together can have a mortgage which pays half of a property, renting the other half as shared owners.

#### **Joint Ownership - parents and sons or daughters**

A variant on the Joint Ownership theme is for a parent to buy a property jointly with their son or daughter. The reason for doing this is usually not to increase resources but as a way of satisfying a lender that the person they are lending to has 'legal capacity'.

Legal capacity can arise as an issue where the lender believes the individual they are lending to has insufficient understanding of the nature of the obligations they are entering into e.g to pay the mortgage and consequences of breaking the terms e.g becoming homeless. Where the lender knew the borrower lacked legal capacity the contract is voidable. This is a risk lenders will be wary of and may prevent ownership. One solution is for the son/daughter to jointly own with a relative whose capacity is not in doubt. When this is done there must be doubt as to whether strictly speaking ISMI is payable where one of the joint owners is not disabled or eligible for Income Support.

#### 4. Company Ownership

An alternative to joint ownership for sharing is for a company to be set up to acquire or build property. One example involves 8 parents becoming shareholders in a company set up with the purpose of developing accommodation for people with learning disabilities. Some (or all) of the parents will be directors of the company. Advantages of this route are:

- A vehicle for bigger developments - can be used for example to buy a plot of land and develop a block of purpose designed flats.
- Forming a company forces all concerned in the process of preparing objectives, memorandum and articles of association to think through in some detail what the purpose is and how matters will be managed in practice.
- As a legal entity the company can borrow - although families may be asked to offer guarantees.
- The company has a life which extends beyond the life of any individual parent.
- It provides a vehicle for managing and maintaining property, also possibly of providing or managing care and support in the long term.

The biggest difficulties are likely to be:

- Finding like minded parents in the position to contribute to the company.
- Reaching agreement will inevitably mean some compromises and can be a source of friction and resentment.
- Like joint ownership some restrictions on withdrawing funding is needed. However, a shareholding structure means in principle shares are tradeable and getting money out may be more straightforward than in other cases.

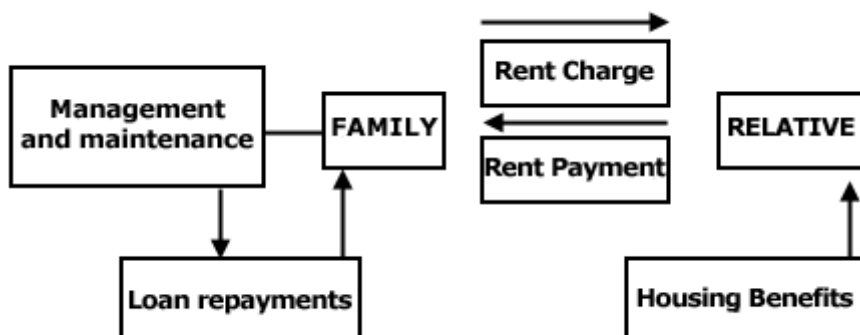
#### 5. Buy to Rent

##### Buy to Rent to a Relative

It has now become quite common to buy a property as an investment, renting it out as an alternative to investing in stocks and shares. Investors are looking for rental income and possible capital appreciation. A question which commonly arises for Housing Options is whether parents (or other relatives) can buy a property and rent it out to a son or daughter?

The answer is, in principle, yes ... like anyone else. The real question is usually however, can a property be rented out to a close relative on the basis they will claim Housing Benefit to pay a rent? The rent is in turn used to repay the loan taken out by the family. Here there are Housing Benefit regulations which have sometimes been used to prevent families renting a property to a son or daughter even though this may be a very sensible and cost effective arrangement.

##### Management and Maintenance



In normal circumstances, if a landlord lets out a property they can charge a rent. This is obviously true whether in the public or private sector. If the tenant has a very low income or is on Income Support they can claim Housing Benefit.

## Housing Benefit Rules

The rules on what is eligible and restrictions on how much rent can be met are hugely complex. However, there are two aspects of the regulations which are central to buying to rent to a close relative:

- Parents are treated as private landlords. This means that the rent they wish to charge is referred to a Rent Officer who in effect determines what rent is reasonable for the property. He informs the Housing Benefit Department who use this to determine the limit of Housing Benefit payable. So if the Rent Officer says a reasonable rent (they may talk about 'reference rent') is say £50 per week but the actual economic rent based on the loan repayments plus management and maintenance costs is £70 per week then Housing Benefit will use £50 per week to calculate Housing Benefit entitlement not the actual rent. Market rent may of course be even higher than the economic rent as a private landlord will need a return for risk - a profit to stay in business.
- There are questions around whether if a parent lets a property to a son or daughter they will be eligible for Housing Benefit because they are related.

The regulations are set out in a 1998 Statutory Instrument (SI) 3257. This SI does not encourage renting by close relatives because of fears that benefits could be exploited in some way by families setting up artificial letting arrangements. However, at the end the SI explains that one relative may let to another provided:

- The letting is on a commercial basis
- Housing Benefit administrators are satisfied the arrangements are not being set up simply in order to obtain Housing Benefit.

The critical (but difficult to comprehend) wording is reproduced below:

*Amendment of regulation 7 of the Housing Benefit Regulations 3. For paragraph (1) of regulation 7 of the Housing Benefit Regulations (6) there shall be substituted the following paragraphs:*

'A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where -

- the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis
- this liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner

(1A) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law'.

This says first that lettings must be commercial i.e. like any other private landlord. Second, Housing Benefit will not be paid if the landlord is a close relative who actually lives in the house.

The Local Authority which administers Housing Benefit must be persuaded that there are good reasons for the letting arrangements between relatives. If the property let to the relative is a separate, self-contained dwelling, let on a commercial basis then in principle the rent should attract Housing Benefit.

The kind of questions asked are:

- Has the property been rented out before?
- Would the property be rented out if the son/daughter were not living there?
- How are the bills paid? Has any contribution been made by the tenant?
- Has any rent been paid on account pending a Housing Benefit decision?
- Would the landlord evict you if the rent was not paid?

To satisfy the Housing Benefit Department that it is set up for sound reasons say:

- why housing of a particular type, size or in a particular place is scarce or best provided in this way
- how support arrangements are important – eg. being close to parents may mean they can continue to provide some care and support otherwise impossible
- the comparative cost of alternatives

There is often uncertainty as to how the Local Authority will interpret the regulations, they vary and logic and common sense do not always prevail. What appear to be entirely sensible arrangements which enable parents to continue to provide care with huge savings to the Exchequer but which can only be afforded by families if there is a rental income are sometimes rejected by Local Authorities on the grounds arrangements are being set up simply in order to exploit Housing Benefit .

The Department may also raise questions about 'legal capacity' for a tenancy.

Action that families can take include:

- Seeking the advice or agreement from the Housing Benefit department before acquiring a property. Local Authorities with long backlogs of case work and poor administration vary as to how helpful they are willing to be
- Ensure you are familiar with the regulations
- Ensure the letting is unquestionably on a commercial basis - parents must act in every respect as any other private landlord
- If a claim is refused the tenant can ask for the decision to be reconsidered and then appeal formally. Finally, if this is still unsatisfactory, it is possible to go a stage further and appeal to Commissioners on points of law. The process is set out in the 'Disability Rights Guide' published by the Disability Alliance

In 2004 Housing Options supported a family, who had built an annex to house their son who has autism, to appeal to the Social Security Commissioner against a decision by the Housing Benefit Department to refuse benefit on the rent. The appeal was successful and this case now provides the best guidance on how the relevant regulations are to be interpreted. A case study based on the Commissioner's decision appears on Housing Options website.

## **6. Inheritance**

Direct inheritance - If the property is inherited with the intention that it continues to be occupied by the disabled relative then the various benefits of continuing to live at home may be realised. In addition, the advantages of direct inheritance are:

- Legal capacity is not required as no contract is involved
- It avoids the trouble and expense of having to set up a Trust
- Avoid doubt as to how Trustees will exercise their discretion

The disadvantages and risks are:

- The person may be unable to manage property and maintenance themselves
- Without other funds held in Trust, paying for major repairs may be difficult
- The property is more vulnerable to financial claims from Social Services who may seek to levy charges for services
- The property may need to be sold in order for tax demands, such as Inheritance Tax, to be paid

## **7. Discretionary Trusts**

Discretionary Trusts have increasingly been seen as a key mechanism for making long-term financial provision for disabled relatives. Discretionary Trusts are a legal way of putting assets - money, shares and property - aside for a 'beneficiary'. Advice of a solicitor with expert knowledge of Trust law is required. To work in the way intended Trustees must have discretion as to how funds are used, the beneficiary should not be the sole beneficiary and must not have a right to either the assets of the Trust.

Key advantages of putting property in Trust are:

- Further protection against a Local Authority levying a charge on an owner i.e. protects the asset
- One of the few ways of holding assets that do not compromise entitlement to benefits or Local Authority's responsibility to provide care - this is why Discretionary Trusts are used
- Trustees can contract for management and maintenance on individual's behalf (also assist with other arrangements)
- May be additional funds to pay for maintenance put into Trust

Reasons for not setting up a Trust include:

- Cannot find suitable Trustees of comparable age to the disabled relative
- Concern that the son or daughter does not have a right to what is held in Trust
- Fear that Trustees will use their (legitimate) discretion to benefit people other than the son or daughter or use their discretion to withhold payments from the intended beneficiary

If you require further information or have other queries contact Housing Options.

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