



The hidden dangers of shared ownership

It's touted as an easier way onto the housing ladder, but shared ownership is mired in worrying legal flaws for buyers

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Tuesday 3 September 2013 08.00 BST

Shared ownership is being positioned by housing charity Shelter and others as the future of home ownership for low- and middle-income households, and as a means to encourage investment in home building. However, shared ownership currently presents some significant legal flaws for the purchaser - not the least being that there is actually no 'shared ownership' at all.

As a solicitor who works in leasehold litigation, I am concerned that the significance of a case called *Richardson v Midland Heart*, from 2007, is not more widely known. Rebecca Richardson had purchased a 50% share of a property with housing association Midland Heart for £29,950 in 1995. The arrangement, a typical one, was that she paid rent on the other 50%. There was the usual staircasing option, by which Richardson could opt to pay more for a greater share, up to owning outright with 100%, but, again not uncommonly, she had not exercised this.

Unfortunately, Richardson got into arrears on the rent. Despite agreeing to allow the property to be sold, Midland Heart quickly brought possession proceedings under Housing Act 1988. Midland Heart used a ground where if there are eight weeks of rent arrears when a notice is served and also at the date of the court hearing, the court must order possession, with no discretion to do otherwise.

The court found, reluctantly, that what Richardson had was an assured tenancy for 99 years (the length of the lease). She did not have a lease that could be protected, as it was not for the whole of the property. What is more, she had no right to the return of the £29,950 she had paid. The court made a possession order and Richardson lost the property.

In practice, this means that shared ownership is just a tenancy, with an expensive downpayment for an option to buy the whole property at a later date. The landlord or housing association remains the owner of the property up to the point of the 100% buyout and the tenant can be evicted for rent arrears regardless of how much of the property they supposedly own - and without being recompensed for that payment. A case this year suggested there may be a human rights claim for the return of that money, but this is untested.

Richardson paid for her 50% share up front, but if it were a mortgage the lender would almost certainly step in to pay off the rent arrears, adding the arrears and additional charges to the mortgage loan, to preserve its security and avoid the shared-ownership tenant being evicted. But the legal position remains the same.

There are other problems that, though not unique to shared ownership properties, occur more often with them. For example, frequently the housing association will itself only lease a number of flats in a block built by a developer, which it then sub-leases to people on a shared ownership basis. In this situation, the shared ownership leaseholder will often find that they have no way to enforce repairs to the building, as the housing association will have no responsibility for its condition. The shared ownership leaseholder may well face leaks, heating problems, or defective windows but be unable to make the landlord or freeholder carry out repairs, or be compensated, where a social tenant would at least be able to get compensation from their landlord.

These are major problems for the shared ownership model. The Richardson v Midland Heart problem will almost certainly need legislation to change. While shared ownership may well be the most promising route into home ownership for many, there are substantial risks for those taking that route.

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