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Spotlight

Shared-equity homeownership

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Abstract

Home ownership offers numerous advantages to communities and individuals. However, despite the depreciation in house prices following the Global Financial Crisis, more households in Ireland are finding that they are unable to buy their own homes. This paper suggests that shared-equity homeownership may be a mechanism that could help to make homeownership more accessible. It could also allow existing homeowners the ability to release equity while retaining a stake in their property. However, schemes in existence today offer mixed results. This paper analyses the schemes used across the English-speaking world in search of a best practice solution to shared-equity homeownership.

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Introduction

The benefits of home ownership, both from a psychosocial and an economic perspective, have been widely recognised. Homeownership allows the individual to invest in a resource allowing for long-term wealth creation and tenure stability, while also providing that individual with a sense of identity and belonging. From a community perspective, homeownership has been shown to stimulate economic growth and help build a sense of community cohesion. The Irish State has traditionally encouraged home ownership, through tenant purchase of social housing, as well as through subsidies for owner-occupiers (mortgage interest-relief).

However, homeownership has becoming less attainable for a growing number of people, especially those in younger age groups.

Shared-equity homeownership, in its many guises, has the potential to provide a solution to this problem – making homeownership a realistic option for those who currently cannot afford it and providing opportunities to trade up, even when in a position of negative equity. However, schemes in existence today offer mixed results, potentially creating more problems than they solve over the longer term.

Ireland has employed a number of shared-equity homeownership schemes over the past 30 years. A shared-ownership scheme introduced in 1992 was abolished in 2011. In 2010, an incremental purchase scheme was introduced and, in 2018, an affordable home purchase scheme was placed on a statutory footing. This *Spotlight* will examine each of these schemes by reference to similar schemes used in other English-speaking countries.

An analysis of schemes applied across English-speaking jurisdictions shows that shared-equity homeownership does not offer a one-size-fits-all solution. Rather, potential hybrids and/or a combination of schemes may be more appropriate for various sectors of the community.

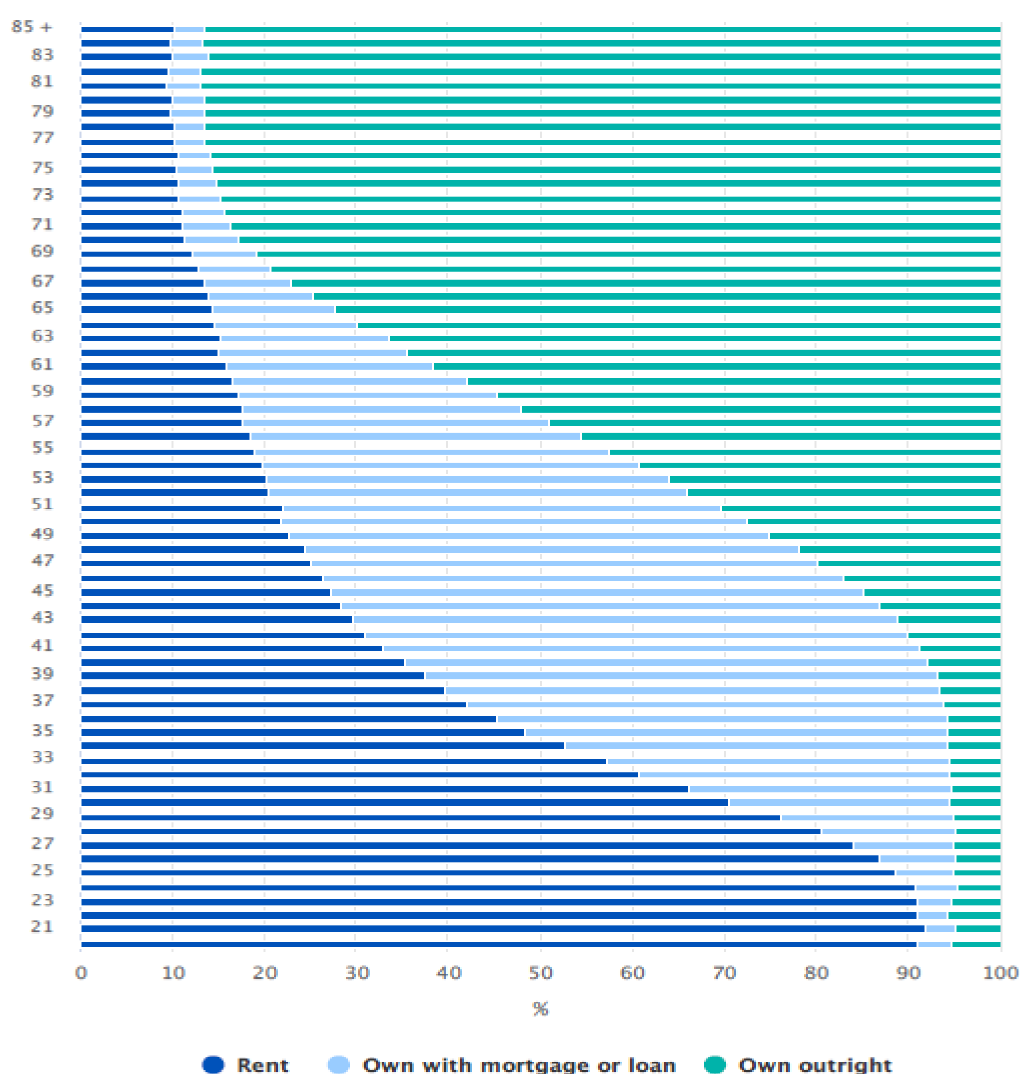
A common characteristic of most shared-equity homeownership schemes is that they require a third party (often, the government) to subsidise the scheme, either through a direct subsidy or through a loan scheme. This need for subsidy means that participation in schemes is often limited to certain members of the community – to ensure that the limited funds are going to those who most need them. These schemes are also subject to a number of restrictions which directly affect the capacity of the new homeowner to freely enjoy his or her property. Some restrictions are in the form of new conditions of ownership – formally affecting the homeowner's tenure.

The need for third-party funds and the inherent restrictions associated with shared equity housing programmes affect their sustainability. It is suggested that the development of a new form of statutory tenure, a hybrid tenure that includes elements of both freehold and leasehold tenure, could facilitate the participation of the private sector in shared-equity homeownership, creating a sustainable market in shared-equity homes. This statutory tenure could also help to clarify and simplify the conveyancing process not just for shared-equity homes but also for multi-unit developments and co-living arrangements.

Homeownership in Ireland – a changing landscape

Central Statistics Office figures show that over the five years between 2011 and 2016, the percentage of the population renting rose by approximately 5%, with almost a third of renters renting from a local authority. This upward trend in renting aligns with a drop in owner-occupiers over the years, and this trend is especially pronounced in urban areas.[1] In 2016, the tenure profile of the population broken down by age (see Figure 1) shows that the vast majority of people aged between the early-20s to mid-30s are living in rental accommodation, giving rise to the term 'Generation Rent' – a generation for whom the cost of housing has outstripped wage growth, making it 'impossible' for them to be able to buy a home.[2]

Figure 1: Tenure status by age of householder, 2016



[1] Central Statistics Office, 'Census of Population 2016 – Profile 1 Housing in Ireland: Tenure & Rent' (last accessed on 29 May 2020). The age at which home ownership became the majority tenure category was 35 years in 2016.

[2] See, for example, Michael Byrne 'Generation rent and the financialization of housing: a comparative exploration of the growth of the private rental sector in Ireland, the UK and Spain', (2020) *Housing Studies* Vol. 35(4), 743-765. See also, Jennifer O'Connell, 'Generation rent: "There's no hope of any of us buying a house"', *The Irish Times*, 6 February 2020.

Benefits of homeownership

While renting may offer benefits of labour market mobility, living closer to work, and a shorter-term financial commitment, home ownership provides a number of longer-term benefits. For instance, homeowners are less likely to face housing costs at retirement, while renters will generally have to pay rent from their pension or savings. Also, homeowners will have an asset which they can choose to pass on to others or to sell, should they desire the liquidity.

With rent sometimes considered to be 'dead money', a major benefit claimed for homeownership is that owners gradually reduce their outgoings and increase their equity; thus, it is one of the few leveraged investments available to low-income households. Although asset values rise and fall during the course of market fluctuations, housing equity will always represent an important, and often the only, source of personal wealth for many homeowners. Housing wealth represents the most widely distributed asset class in many English-speaking jurisdictions. Also, while many of the touted secondary benefits of home ownership, such as overcoming asset poverty and developing financial self-reliance are debatable, it is clear that the investment potential of home ownership does provide a sense of stability and security for households.[3]

There are also benefits for the State in promoting homeownership. Traditionally, the Irish State has encouraged homeownership through tenant-purchase schemes for those in social housing, as well as offering mortgage-interest relief to owner-occupiers. The Government White Paper of 1969 outlined the benefits of owner-occupation, as:

- removing part of the housing burden from local authorities;
- saving in maintenance costs for local authorities; and
- encouraging better building standards.[4]

As highlighted by Samantha Evans in her work for the Churchill Fellowship:

> "The benefits of long-term wealth creation and tenure stability are known drivers for home ownership, however other social and economic benefits including stimulating economic growth and neighbourhood cohesion are also resultant outcomes."[5]

Dr Alison Wallace, Research Fellow at the University of York, has highlighted that homeownership has also been linked to positive psychosocial outcomes. Studies have found that homeownership is considered to be central to a person's identity and his or her sense of place or belonging – conveying a sense of pride, status and advancement for many people. In many English-speaking countries, homeownership has become normalised to such an extent that other housing tenures have become stigmatised, especially if tenants continue to rent past a certain age.[6]

Yet, homeownership is becoming less attainable for a growing percentage of people. Aspiring home buyers are faced with the challenges of satisfying mortgage-lending criteria and

[3] Alison Wallace, Centre for Housing Policy, University of York, UK, 'Shared Ownership: Satisfying Ambitions for Homeownership?', *International Journal of Housing Policy* Vol. 12, No. 2, 205–226, June 2012, pp 207-214.

[4] Dr Padraic Kenna, *Housing Law, Rights and Policy*, Clarus Press, Dublin: 2011, Ch. 2.

[5] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 4.

[6] Alison Wallace, Centre for Housing Policy, University of York, UK, 'Shared Ownership: Satisfying Ambitions for Homeownership?', *International Journal of Housing Policy* Vol. 12, No. 2, 205–226, June 2012, p. 215.

accumulating the requisite deposit while paying historically high rents. The average deposit is considerably larger now than it was a bit over a decade ago, affected by consistent growth in purchase prices and the introduction of the Central Bank's mortgage macro-prudential rules after the Global Financial Crisis in 2008 (See Figure 2).[7]

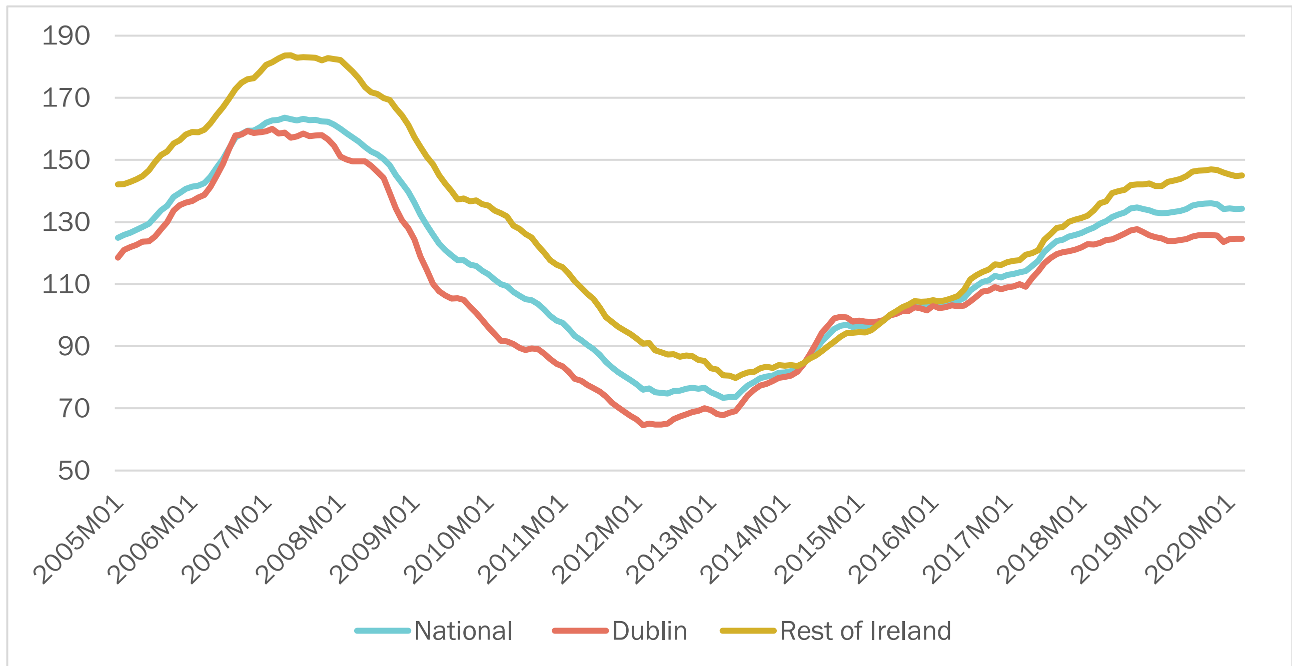
Figure 2: Central Bank macro-prudential rules ('mortgage measures')

Source: Central Bank of Ireland, 'Mortgage Measures' (last accessed 3 June 2020).

According to Central Statistics Office figures, although property prices in Ireland are on average 17.9% lower than they were at their peak in 2007 (22.1% lower in Dublin compared to February 2007), average property prices have increased nationally by 83.1% from their trough in early 2013 (92.9% in Dublin from a February 2012 low) (See Figure 3).

[7] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 9.

Figure 3: Irish Residential Property Price Index 2005–2020



Source: Central Statistics Office Ireland (adapted).

The following paper will examine whether shared-equity homeownership may provide an affordable access point into the Irish property market.

What is shared-equity homeownership? Why is it important?

For the purposes of this *Spotlight*, a shared-equity homeownership scheme will be taken to mean a scheme that allows a purchaser to buy a part stake (or equity[8]) in a property or a property ownership scheme. Generally speaking, the homeowner will be able to increase his or her stake in the property or property ownership scheme over time until he or she owns the property outright. This gives the purchaser an opportunity to own their own home, without committing the amount of capital required under traditional models.

On February 2020, the Allied Irish Banks (AIB) published its fifth real estate paper, 'The Irish housing market – are we there yet?'. The paper, which was written and published before the Covid-19 emergency, argued that affordability constraints and the loan-to-income rules have resulted in the slowdown in residential property prices, particularly in the Dublin market. The paper argues:

> "The most appropriate way to address the issue of affordability should be supply side measures that increase the supply of appropriately located zoned land and critically, reduce the cost of development. However, as neither of these approaches are imminent, the other option is to tackle the demand side of the market and introduce very specific and targeted measures to mitigate the affordability challenges faced by these households."[9]

AIB suggests that there is merit in reintroducing a shared-ownership scheme to target the affordability segment of the housing market and expand the existing shared equity loan scheme to the wider market.[10]

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[8] The ownership stake (equity) in a property may be distinguished from the conditions of ownership (tenure). Although the conditions under which a property is held may affect the capacity to implement an effective shared equity scheme, the following paper will focus on ownership, not tenure.

[9] Allied Irish Banks, 'The Irish housing market – are we there yet?', February 2020, p. 1. Demand-side economics involves the use of government spending and growth in the money supply to stimulate the demand for goods and services and therefore expand economic activity. This activity is generally focussed on the lower and middle classes.

[10] Allied Irish Banks, 'The Irish housing market – are we there yet?', February 2020, p. 1.

Shared-equity homeownership models

There are a number of different models of shared-equity homeownership and these may be broken down into three subsets:

1. Subsidy retention
2. Shared ownership
3. Shared equity loan

Table 1 highlights the distinguishing characteristics of each model.

Table 1: Shared-equity homeownership models

Subsidy Retention	Homes are purchased at a 'discount' from the normal market rate. The discount or subsidy (difference between the market price and the amount paid by the homeowner) is retained in the property, allowing a future purchaser to buy the property at a discounted price, without the need for a third party to provide a further subsidy to the new purchaser. A third party may initially subsidise the purchase by: • selling a property that it owns at below market price; • selling a right of occupation in a property it owns at a discounted price; or • giving the owner the part of the purchase price to allow them to affect the purchase. This model may be realised through employing a long lease or through the sale of shares in a property company. This model may be distinguished from 'subsidy recapture' models (shared ownership and shared equity loans), as those models require the subsidy (initial advantage) to be recovered eventually by the third party (upon the sale of the property).
Shared Ownership	A third party commits to purchase (or retain, if the third party is the vendor) a portion of a property. This allows a person (homeowner) to purchase a share in the ownership of the property. The agreement between the third party and the homeowner will give the homeowner a right of possession in the property, subject to certain conditions. The conditions may require the homeowner to pay rent on the unowned portion of the property, to insure the property, to pay property service fees and keep the property insured, and to cover the maintenance of the property. The rates of rent would

	usually be pre-agreed and indexed. The homeowner will maintain a right to purchase a greater share of the property over time ('staircasing'), or purchase the property outright. The purchase price of future portions would usually be based on the market value of the property at the time. The model is often realised through conveying properties employing a complicated leasehold structure.
Shared Equity Loan	A portion of the market price of the property is paid for through an equity loan provided by a third party. An equity loan differs from a normal loan in that it not quantified by the sum that is borrowed. Rather, it is quantified as a proportion of the property's market value. In this way, the loan appreciates with capital growth. Often, equity loans do not accrue interest, at least not for an initial period. This means that a person taking out an equity loan does not need to support the loan, at least not for an initial period, and the loan does not need to be paid off until the property is sold or refinanced. This model almost always employs charging the deeds of the property.

Each of these models will be examined below.

The subsidy retention model

The subsidy retention model requires a third party (usually a government authority, a housing authority, a community land trust or a co-operative) to subsidise the purchase of a property, either by selling the property at a discount, paying a percentage of the purchase price or selling a share in a property co-operative or company, giving the homeowner a right of occupation. The third party will retain an equitable share in the ownership of the property.

The sustainability of such a scheme is dependent upon the homeowner committing to limiting the resale price of the property. This ensures that when the property is sold by the homeowner, the new purchaser may buy the property at a discounted price, without further need for a subsidy.

As subsidies are applied at or before the time a new buyer purchases a home, the subsidy reduces the purchase price below market rates, or subsidises construction costs that cannot be recouped from the sales price. Therefore the main advantage of using this model is that prospective purchasers can afford to buy or build a home that would otherwise be out of their reach.[11] However, retention of the subsidy restricts the resale market of the property to qualifying purchasers, limiting the future sales market and affecting potential capital gains.[12] Moreover, although the subsidy retention model inoculates homeowners from market fluctuations, to the extent that the subsidised portion will absorb losses, the model also limits the extent to which a homeowner can realise the full potential of market gains.[13] This has a knock-on effect. A participant in a subsidy retention scheme who wishes to leave the scheme to purchase a unsubsidised property in a rising market will be at a financial disadvantage to those already in the market. The equity they realise from the sale of their subsidised home will be worth less than the equity they would have earned if they had bought the property without restrictions. This may have the effect of locking people into the subsidised housing system – potentially creating an underclass of home ownership.[14]

Generally speaking, subsidy retention schemes do not offer the participant much flexibility. All schemes based in subsidy retention include restrictions that have the potential to affect the participant's ability to enjoy the benefits of homeownership:

- Participants are usually required to use the property as their primary place of residence. Limits may be placed on occupation of the dwelling.
- The ability of participants to make capital alterations to the property may be restricted (financial benefits from alterations may also be limited).
- Participants may be required to undertake home-ownership training courses.

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[11] J Michael Collins, 'Developing Effective Subsidy Mechanisms for Low-Income Homeownership', Joint Center for Housing Studies, Harvard University, October 2013. See also, Anna Carlsson, 'Shared Equity Housing: A Review of Existing Literature', Harvard College: 2019.

[12] See generally: Local Housing Solutions, 'Deed-restricted homeownership' (last accessed on 13 May 2020). See also, Anna Carlsson, 'Shared Equity Housing: A Review of Existing Literature', Harvard College: 2019.

[13] See generally: Rick Jacobus and David Abromowitz, 'A Path to Homeownership: Building A More Sustainable Strategy for Expanding Homeownership', February 2010. See also, Anna Carlsson, 'Shared Equity Housing: A Review of Existing Literature', Harvard College: 2019.

[14] See generally: John Emmeus Davis, 'Shared-equity homeownership: The changing landscape of resale-restricted, owner-occupied housing', National Housing Institute, 2006.

- The use of the dwelling may be limited, which could affect the homeowner's quality of life.[15]

As explained by Dr Alison Wallace, the shared-equity homeownership sector has been developed with transitional ownership in mind, that is, it is considered as a 'stepping-stone' or 'foot-on-the-ladder'. Constrained control of the property or asset withdrawal may be of less importance if the intention is to live there for only a short period with a mind to using the accumulated equity to fund a deposit for a home purchase on the open market. The question is whether the potential for equity gains and the ability to adopt the epithet 'homeowner' adequately compensates participants in a subsidised scheme for the inherent limitations on control and management of 'their' property. This may become a bigger issue depending on the duration of the homeowners' tenure.[16]

Schemes incorporating the subsidy retention model

Schemes incorporating the subsidy retention model are mainly found in the United States.

There are two main types of scheme:

1. Deed-restriction schemes (often employed by Community Land Trusts). This involves attaching covenants (or restrictions) on the leasehold deed under which the property is purchased, limiting the future sales price of the property.
2. Co-operative housing schemes. This involves the purchase of a share in a housing co-operative or property company with a right of occupation, not a share in the property itself.[17]

Deed-restriction schemes explained

Where subsidy retention is achieved via a deed-restriction scheme, conditions are placed on the deed(s) to the property at the time of transfer. A deed restriction is a provision in a deed that limits how a property may be used. Some common examples include preventing residential dwellings being used as commercial premises, or preventing trees from being removed. These conditions 'run with the land' and, as a result, they bind current and future homeowners.

A typical deed restriction associated with a subsidy retention model involves prescribing a formula to set a ceiling on any subsequent sales price of the property. For example, the formula may involve indexation of the future sales price to average wage growth, or to the consumer price index – ensuring that the particular property remains affordable even when growth in property prices outstrips wage growth or inflation. The intention behind this is to ensure that affordable stock is not lost through future sales.[18]

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[15] See generally, Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019; Local Housing Solutions, 'Deed-restricted homeownership' (last accessed on 29 May 2020); US Department of Housing and Urban Development, Office of Policy Development and Research, ' Shared Equity Models Offer Sustainable Homeownership', *Evidence Matters*, Autumn 2012; John Emmeus Davis, 'Shared-equity homeownership: The changing landscape of resale-restricted, owner-occupied housing', National Housing Institute, 2006.

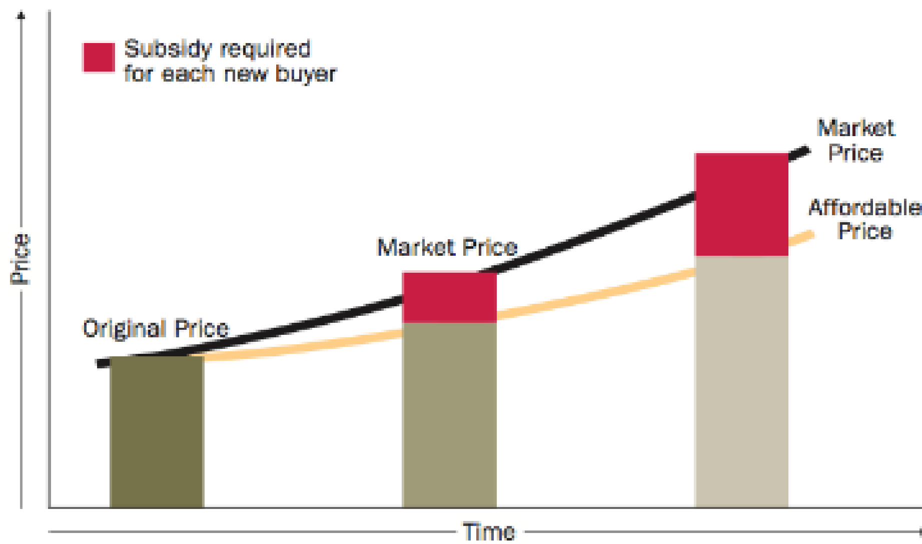
[16] Alison Wallace, Centre for Housing Policy, University of York, UK, 'Shared Ownership: Satisfying Ambitions for Homeownership?', *International Journal of Housing Policy* Vol. 12, No. 2, 205–226, June 2012, p. 221.

[17] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019.

[18] Rick Jacobus and David Abromowitz, 'A Path to Homeownership: Building A More Sustainable Strategy for Expanding Homeownership', February 2010. See also Rick Jacobus, 'Understanding Subsidy Retention' (last accessed 11 May 2020). The linked Youtube video provides a good explanation of why this price limiting is necessary. (https://www.youtube.com/watch?v=9NVoZPK2SAI).

Figures 4 and 5 explain why price limiting is so important to these schemes.

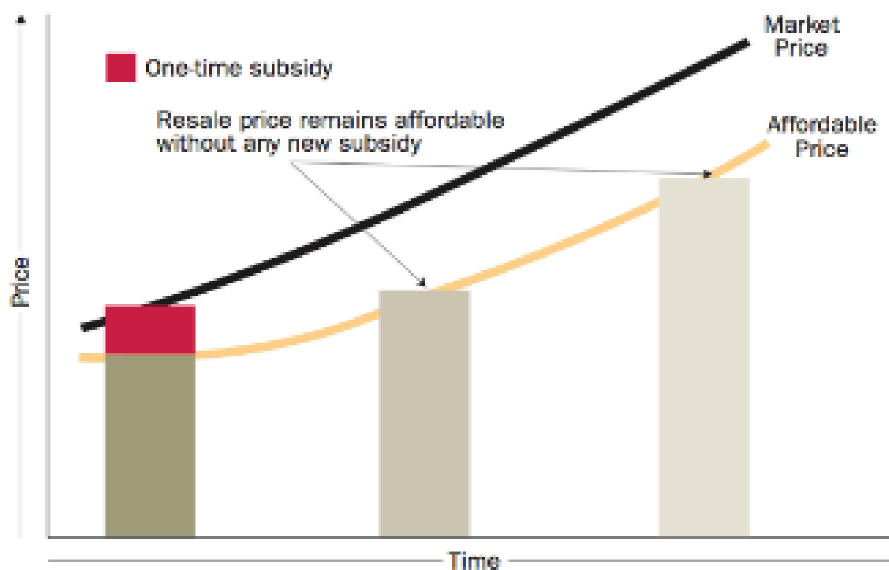
Figure 4: Subsidised housing without price restrictions



Source: Thrive Santa Ana Community Land Trust, '[Sustainable and inclusive growth, People's Land and Housing]', Nov. 2018, p. 10.

In this scenario, there is no deed restriction limiting the future sales price of the property. Each time the property is sold, the market price increases and a further top-up subsidy would need to be given to assist a new purchaser to buy the property at an affordable price.

Figure 5: Subsidised housing with price restrictions



Source: Thrive Santa Ana Community Land Trust, '[Sustainable and inclusive growth, People's Land and Housing]', Nov. 2018, p. 10.

In this example, a deed restriction is in place. It requires the resale price of the property to be limited in such a way that it cannot exceed an affordable price. A subsidy is paid for the first purchase and no further subsidy is needed for a new purchaser, who has the capacity to purchase the property at an affordable price.

Specific issues affecting deed-restriction schemes

The sustainability of a deed-restriction scheme may be affected by the capacity of participants to maintain mortgage payments. Deed restrictions are subordinate to the borrower's first mortgage, meaning the mortgage holder's interest will take precedent. A foreclosure on a mortgage would give the mortgage provider vacant possession of the property, effectively removing those restrictive covenants designed to retain the original subsidy.[19]

A further issue that may limit the extent to which a deed-restriction scheme may be applied in Ireland would be that the lease under which the property is held (and which contains restrictive covenants) would need to be of sufficient length to guarantee good marketable title to a lending institution.

'Good marketable title' is not statutorily defined in Ireland. However, it means the standard of title which is given and accepted by conveyancing solicitors following good conveyancing practice and rules set out by the Law Society of Ireland. Good marketable title in Ireland consists of freehold and leasehold title with an unexpired term of at least 70 years (unless the lessee has a statutory right to purchase the Fee Simple under the Ground Rents legislation).

Many lending institutions will not advance monies where the title being offered as security is not good marketable title, where the solicitor is going to have to qualify title. It follows that Irish participants in a deed-restriction scheme may find it difficult to secure a mortgage on the property, requiring them to borrow at higher rates.

Co-operative housing schemes explained

A co-operative refers to a group of people who have voluntarily joined together in a jointly-owned and democratic enterprise, with the aim of meeting particular social and economic needs. The co-operative movement is rooted in certain values: self-help; self-responsibility; democracy; equality; equity and solidarity.

A housing co-operative is a form of community-led housing that allows a group to combine the resources of its members so that their buying power may be leveraged, lowering the individual cost of the services and products relating to home ownership.

A housing cooperative is similar to a housing association or even a property company – it is a legal entity that owns real estate. However, it differs from the other two insofar as it is directly managed by its tenants, either by majority or unanimity. Each member of the cooperative is granted the right to occupy one housing unit, acting as a share purchase in the legal entity.[20]

Co-operative housing schemes have been used throughout the world and have existed in Ireland since the 1950s. Co-operative Housing Ireland, an approved housing body under section 6 of the *Housing (Miscellaneous Provisions) Act 1992*, facilitates the establishment and engagement with housing co-operatives in Ireland, including:

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[19] Local Housing Solutions, 'Deed-restricted homeownership' (last accessed on 13 May 2020).

[20] Community-Led Homes, 'What are housing co-ops?' (last accessed 27 May 2020); Co-operative Housing Ireland, 'What are Co-ops' (last accessed 27 May 2020). See also International Co-operative Alliance 'Guidance Notes to the Co-operative Principles', 2015.

- Home-ownership co-operatives, which help members who have the financial capacity to do so to build or buy their own homes. Most of these co-operatives have been developed in the Dublin area.
- Shared ownership co-operatives, which help members to part-purchase their own homes while a portion of the interest in the property remains owned by the co-operative.
- Co-ownership co-operatives, which allow for members who live in apartment blocks or townhouses with shared common areas or facilities to organise the management and maintenance of those areas.[21]

Specific issues affecting co-operative housing schemes

The same issue regarding good marketable title would affect participants in co-operative housing schemes in Ireland. As the participant is not purchasing a property, only a share in a co-operative offering a right to possession, it may be difficult for the participant to prove good marketable title.

A further issue affecting participants in co-operative housing schemes includes the requirement to pay ongoing fees and charges. Co-operative owners must pay not only for their shares, but for recurring maintenance fees and charges, generally based on the value of the unit. These fees and charges can add up quickly, particularly if the unit is expensive. Overall this may still be less expensive than renting or actual home ownership, but some participants may find it difficult to budget for these fees and charges, especially when they are coupled with other overheads such as the costs of furniture and utilities.[22]

[21] See Co-operative Housing Ireland, 'Co-op Housing' (last accessed 29 May 2020).

[22] Pentiuk, Couvreur & Kobiljak, Attorneys and Counsellors at law, 'What are the advantages and disadvantages of co-ops?', *Co-op Member Issues, Firm News*, 26 October 2017.

The shared ownership model

Shared ownership allows a person to purchase an initial share in a property, giving them a right of possession in the property, subject to certain conditions. These conditions may require the purchaser to pay rent on the unowned portion of the property, to insure the property, to pay property service fees, and to cover the maintenance of the property. The purchaser will be given the right to purchase a greater share of the property over time (through a process known as 'staircasing'), or purchase the property outright. The rates of rent would usually be pre-agreed and indexed, while the purchase price of future portions would usually be based on the market value of the property at the time.

Figure 5: An overview of a shared ownership model

Source: Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 15.

Shared ownership has been used in the United Kingdom for 40 years. The most recent iteration, 'Help to Buy: Shared Ownership' was launched in England in 2015, at around the same time as the 'First Steps' programme in London. Approximately 157,000 households in England currently live in shared-ownership accommodation, representing 1% of the total housing stock.[23]

Housing policy is devolved in the UK. Northern Ireland has what it refers to as a 'co-ownership' model, managed through registered Housing Agencies. Scotland and Wales each promote their own model.

[23] Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020; Michael Sheils McNamee, 'Could shared ownership help to solve some of Ireland's housing problems?', *The Journal*, 29 January 2015.

The Irish scheme

The Irish shared-ownership scheme was introduced in 1992 by the *Housing (Miscellaneous Provisions) Act 1992* but was abolished in 2011.

The scheme followed the British experiment which began in 1985, but the Irish version was very different, operating within a much simpler structure. The scheme was managed by local authorities and was targeted at low-to-middle income earners in need of housing.

An eligible purchaser had to be:

- in need of housing and satisfy the income test,[24]
- registered on a housing waiting list with a local authority,
- a local authority tenant or a tenant purchaser (if buying a private house, the tenant would have had to return possession of local authority house to the local authority), or
- a tenant for more than one year of a home provided by a housing association under the Capital Loan Scheme (if buying a private house/apartment the tenant would have had to return possession of the house/apartment to the housing association).[25]

Section 2 of the *Housing (Miscellaneous Provisions) Act 1992* allowed a lease to be granted for a term of more than 20 years but less than 100 years for a sum of money being not less than 25%, and not more than 75%, of the market value of the house at the time of purchase. In practice, local authorities required a 40% initial purchase.

The scheme gave the participant a right to purchase further portions of the property at a price determined in accordance with the provisions of the lease (often the market value), increasing his or her ownership stake up to 100%. Rent was paid on the proportion of the property owned by the local authority at a rate of 4.3% of the value of the proportion per annum. Rent subsidy (as it was known at the time) could be used to cover all or part of the rent.[26]

Buyers would take out a mortgage to pay for their initial share of the property – this was generally organised through the local authority. Some local authorities operated an upper limit on the value of the property, set conditions on the type of property that could be purchased and set a maximum percentage of income that could be apportioned to rental/mortgage payments.[27]

From 1991 to 2010, a total of 16,492 shared-ownership loans were issued under the scheme, of which 3,777 remained by the end of Q3 2016.[28]

A 2013 review of the scheme found some borrowers faced serious affordability issues. In response, on 1 July 2015, the annual indexation of the rental equity balance and rental payments were amended to reduce the monthly rental costs. In addition, from 1 April 2016, a restructuring option was made available to borrowers, which involved rolling-up all outstanding debt into a single

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[24] To satisfy the income test: singles needed to have a gross income over the previous income tax year of €40,000 or less; while for couples, two and a half times the gross income of the higher income earner plus the income of the other earner had to total less than €100,000.

[25] Citizenship Information Service, 'Shared-ownership scheme' (last accessed 29 May 2020).

[26] Joe Hogan SC, 'Housing Initiatives: Shared-ownership scheme – social housing', *Conveyancing and Property Law Journal 2007*, 12(3), 83-89; Citizenship Information Service, 'Shared-ownership scheme' (last accessed 29 May 2020).

[27] Citizenship Information Service, 'Shared-ownership scheme' (last accessed 29 May 2020).

[28] Simon Coveney TD, Minister for Housing, Planning, Community and Local Government, 'Shared-ownership scheme', *Dáil Éireann Debate*, Response to Questions 323 and 324, 4 April 2017.

annuity loan. Finally, the variable mortgage interest rate charged to local authority borrowers was reduced to 2.3% with effect from 1 July 2016, helping many shared-ownership borrowers.[29]

Issues with shared ownership

There are a number of issues associated with shared-ownership schemes, including:[30]

- affordability, transaction costs and mortgage availability;
- conveyancing issues;
- security of tenure;
- restrictions; and
- capital risk and limited marketability.

Affordability, transaction costs and mortgage availability

The biggest single issue affecting the Irish shared-ownership scheme appears to be that of affordability.[31]

A person who moves from rental accommodation to a shared-ownership property incurs a number of different costs. Instead of paying a monthly rent, he or she will generally need to cover the costs of a deposit, mortgage fees and repayments, rent on the unowned portion, insurance, property taxes, solicitors fees, maintenance and repairs, furniture and the ground rent on the lease and the service charge for caretaking and maintenance of communal areas. Although the sum total of these elements may be equal to or lower than monthly rent, the added complexity and need to budget may overwhelm some purchasers. The mortgage rates and level at which rent on the unowned portion is indexed will also directly affect affordability.[32]

In the UK, a 2018 YouGov survey of 200 shared owners found that only 10% had increased their equity stake, with 63% of respondents identifying affordability as the main barrier. In reality, staircasing becomes virtually impossible in a rapidly rising housing market, as the amount needed to purchase a share rises in line with the property's value. The affordability of staircasing is also limited by transaction costs. As the lease under which the share is held would need to be amended at each rung of the staircase, solicitors' costs, valuation costs and stamp duty could add up.[33]

In Ireland, as section 2(3) of the *Housing (Miscellaneous Provisions) Act 1992* specifically provided that Part II of the *Landlord and Tenant (Ground Rents) (No. 2) Act 1978* did not apply (that is, the lessee (the 'homeowner') did not have a statutory right to purchase the freehold title from the

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[29] Simon Coveney TD, Minister for Housing, Planning, Community and Local Government, 'Shared-ownership scheme', *Dáil Éireann Debate*, Response to Questions 323 and 324, 4 April 2017; Eoghan Murphy TD, Minister for Housing, Planning and Local Government, 'Shared-ownership scheme', *Dáil Éireann Debate*, Response to Question 263, 15 May 2019.

[30] Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020.

[31] Simon Coveney TD, Minister for Housing, Planning, Community and Local Government, 'Shared-ownership scheme', *Dáil Éireann Debate*, Response to Questions 323 and 324, 4 April 2017; Eoghan Murphy TD, Minister for Housing, Planning and Local Government, 'Shared-ownership scheme', *Dáil Éireann Debate*, Response to Question 263, 15 May 2019.

[32] Home Owners Alliance, 'Shared Ownership: What to watch out for' (last accessed on 29 May 2020); Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020.

[33] Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020.

lessor (the local authority)), participants would find it difficult to prove good marketable title to a lender if the remaining duration of the lease dropped below 70 years – this would have a serious impact on the ability of the participant to obtain a mortgage (especially for the purchase of future tranches of the property).

The UK scheme allowed an initial equity stake of between 25% and 75% of the property's value, with the prospective purchaser required to raise a deposit and mortgage. Even though studies have found that rates of mortgage arrears and repossessions amongst shared owners were comparable to other first-time buyers purchasing through the open market, participants in shared-ownership schemes in the UK have found it difficult to secure a mortgage. Shared ownership is seen as complex and potentially higher risk by mortgage lenders, and so many lenders that do offer mortgages to shared owners offer less favourable interest rates than on comparable mortgages offered for open-market properties. This has further affordability implications.[34]

Conveyancing issues with multi-unit developments

In Ireland, where there is no statutory title covering multi-unit developments, units and common areas are held under a long lease arrangement.

Where the local authority is the developer on the long lease and wishes to grant a lease for a shared ownership property, a conveyancing problem arises. The local authority (developer) that has already granted a long lease of a dwelling to a purchaser, as part of a conventional leasehold scheme to secure the running of covenants and deal with common areas, could not then grant another, shorter, lease of the same dwelling to the same person as part of a shared-ownership agreement. It would amount to a lease of a lease that has already been granted.

Instead, the local authority (in its capacity as a shared-ownership 'lender') would need to grant a mortgage by sub-demise to the purchaser, and the purchaser would need to grant a sub-lease of the premises back to the local authority, granting the local authority a right of possession should the purchaser default on the 'mortgage'. However, as the interest of a lessor is statutorily vested in the lessee, the interest of the purchaser ultimately vests in the local authority – limiting the capacity of the purchaser to prove good marketable title.

Where the local authority is not a developer, nothing prevents it from buying the property lease on behalf of the purchaser and then granting a shared ownership lease out of that interest.[35]

Security of tenure

The English case of *Richardson v Midland Heart*[36] creates doubt as to the security of the purchaser's tenure in the case of a default in rent payments. The 'homeowner' had purchased a 50% share of a property with a housing association with a staircasing option to purchase a greater proportion of the property over time. The 'homeowner' was required to pay rent on the other 50%. The lease included a standard-form mandatory ground (Ground 8) that provided if there were eight

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[34] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 39; Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020, p. 28.

[35] Joe Hogan SC, 'Housing Initiatives: Shared-ownership scheme – social housing', *Conveyancing and Property Law Journal 2007*, 12(3), pp 83-89.

[36] [2008] L&TR 31.

weeks of rent arrears when a notice was served and also at the date of the court hearing, the court must order possession, with no discretion to do otherwise. When the 'homeowner' fell into rent arrears, despite agreeing to allow the property to be sold, the housing association commenced possession proceedings. Jonathan Gaunt QC held that although a shared ownership lease is an 'assured tenancy' pursuant to section 1 of the (UK) *Housing Act 1988*, a shared ownership lease is not a 'long lease' for the purposes of section 76 of the (UK) *Commonhold and Leasehold Reform Act 2002* until the 'homeowner' has achieved 100% ownership.[37] It follows that in this context shared ownership is just a tenancy, with an expensive down payment 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' may be evicted for rent arrears, regardless of how much of the property he or she supposedly owns – and without being recompensed for that payment. In that case, the tenant lost possession of the property, together with her initial investment and all moneys paid into the scheme.[38]

Restrictions

As with deed-restriction schemes, shared ownership is generally achieved using a long lease. As a lease amounts to an ongoing agreement between the parties, it may place restrictions on the way in which the shared owner may use the property, for example by prohibiting pets or making alterations to the property. In some cases, the lease may impose additional obligations on the shared owner, for example to repaint the property every five years. There are also likely to be restrictions on whether the shared owner can rent the property out – in the great majority of cases, sub-letting is not allowed. These restrictions make shared ownership less flexible than normal home ownership. They may also affect the capacity of the shared owner to sell the property.[39]

Dr Alison Wallace has noted:

> "Restricting a shared owners' ability to use their housing assets could be considered paternalistic, in that it limits the shared owners' self-efficacy in relation to the use of housing equity to support activities associated with asset-based welfare, such as smoothing income fluctuations and providing for household needs through the life course. Conversely, it could be justified, as restricting access to routine re-mortgaging may increase the sustainability of homeownership."[40]

Capital risk and limited marketability

As with all forms of home ownership, a shared owner takes on a capital risk. As the Irish homeowner understands well, real estate markets may fall as well as rise in the short-to-medium term. Although shared owners are cushioned against losses as they are only investing in part of a property, in the case of a drop in real estate prices the owner still faces the risk of entering into a position of negative equity (where the value of the property falls below the amount of money

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[37] Tristan Salter, 'Tenure confusion: are shared ownership lessees assured tenants, long lessees or both?', October 2018.

[38] Giles Peaker, 'The hidden dangers of shared ownership', *The Guardian*, 3 September 2013.

[39] Home Owners Alliance, 'Shared Ownership: What to watch out for' (last accessed on 29 May 2020).

[40] Alison Wallace, Centre for Housing Policy, University of York, UK, 'Shared Ownership: Satisfying Ambitions for Homeownership?', *International Journal of Housing Policy* Vol. 12, No. 2, 205–226, June 2012, pp 211-212.

borrowed to effect the initial purchase). This risk of negative equity is particularly apparent with new-builds, which generally depreciate over time as the new-build premium declines in value. That said, negative equity only affects people looking to sell. However, it remains a factor influencing the level of flexibility afforded by shared-ownership schemes.[41]

Where a shared owner wishes to sell their interest in a shared-ownership property they must find a buyer who is eligible. The rules affecting eligibility are often very strict. As mentioned, it would often go against the terms of the lease if the purchaser were to rent out the property, if he or she needed or wanted to move out at short notice. Flexibility is therefore entirely at the discretion of the lessor (the housing association or the local authority). The lessor often also retains a peremptory right of purchase, requiring the shared owner to provide notice of his or her intention to sell, and giving the lessor the opportunity to buy out the shared owner, or in some cases, find a 'suitable' purchaser. This lack of flexibility affects the potential re-sale value of the shared owner's stake in the property. A 2011 Cambridge Centre for Housing and Planning Research report found that it is this lack of flexibility that shared owners find most difficult.[42]

Should the shared owner's circumstances change for the worse, he or she may be able to staircase down as well as up, even converting into a full tenant if necessary. In Ireland, this may be achieved through a mortgage-to-rent scheme. But the rules affecting this option may be even more prescriptive than those affecting on-selling – the shared owner is required to explore and exhaust all other options, such as loan rescheduling or selling and moving to a cheaper property. Finally, due to the inflexibility of these schemes, as the value of the owned portion will rise at a slower rate than the general housing market, upon leaving the scheme, pre-emptive departure from a shared-ownership scheme almost always leaves the shared owner in a worse financial position in real terms than if he or she had invested in the general housing market at the start.[43]

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[41] Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020; Home Owners Alliance, 'Shared Ownership: What to watch out for' (last accessed on 29 May 2020).

[42] Hannah Cromarty, 'Shared ownership (England): the fourth tenure?', *House of Commons Library, Briefing Paper Number 08828*, 24 February 2020; Home Owners Alliance, 'Shared Ownership: What to watch out for' (last accessed on 29 May 2020); Hannah Fearn, 'The problem with shared ownership' *The Guardian*, 6 July 2012. See also: P Williams, N Salisbury and R Caven, Cambridge Centre for Housing and Planning Research, 'Opportunities for institutional investment in affordable housing', 2011.

[43] See Hannah Fearn, 'The problem with shared ownership' *The Guardian*, 6 July 2012; Home Owners Alliance, 'Shared Ownership: What to watch out for' (last accessed on 29 May 2020).

Shared ownership versus co-ownership

At present, nothing would stop two people, pooling their money to purchase a property as co-owners. The ownership structure may be either as joint tenants or tenants-in-common. Both of these are quite different to shared ownership as each 'co-owner' has a right to possession – making it difficult to determine which party has a right to which part. Further, co-ownership would be far less flexible for purchasing/selling interests.

Joint tenants hold the property equally – there must be unity of possession, unity of time, unity of title and unity of interest between the co-owners. Moreover, the interest of a deceased co-owner passes to the other co-owner(s) on his or her death.

A tenancy-in-common only requires one of the four unities: the unity of possession. A tenant in common has no right of survivorship. For tenancies-in-common, one or more co-owners may buy out the interest of others to dissolve the tenancy-in-common. However, if the co-owners should develop opposing interests or directions for the property's use, improvement, or desire to sell the property, they must come to a joint agreement to move forward. In cases where an understanding cannot be reached, a partition action may take place under section 31 of the *Land and Conveyancing Law Reform Act 2009*. The partition action can be voluntary or court-ordered, depending on how well the co-tenants work together.[44]

In Canada, the Ontario Government is currently promoting a co-ownership scheme, as a group of individuals or through a co-operative corporation. As noted above, unlike co-operative housing or co-housing, each 'owner' in these co-ownership schemes has a right of possession of the property.[45]

[44] Dr Neil Maddox, BL, 'Land Law' in *Annual Review of Irish Law 2010*, 24(1) pp 452-467.

[45] See Ontario's Housing Supply Action Plan, 'Co-owning a home: Practical information about co-owning a home', *An innovation guide under More Homes, More Choice*, December 2019.

Rent-to-buy agreements and hybrid shared ownership

Rent-to-buy schemes are used by property developers to attract potential purchasers to buy a dwelling that they would otherwise not be able to purchase due to current loan-to-value lending restrictions.

The developer structures the agreement, using an initial period of renting, with an option to purchase at the end of the letting period. The agreement may include an initial option payment, periodic payments that include rent, and a final payment for the purchase of the property. Rent paid may go some way to covering the deposit on the purchase.

Such a purchase structure may provide the developer with a tax advantage, as the money paid in 'rent' and used as consideration for the purchase under such an arrangement, would be considered as capital, not income. However, any 'rent' applied as consideration for the purchase of the property would be subject to VAT at the reduced rate.[46]

In a rent-to-buy arrangement, the tenant is generally required to pay the vendor a one-off, usually non-refundable, upfront option fee. This fee acts as the consideration for the option to buy the house by some date in the future. A person who enters into a rent-to-buy scheme does not partially own the property; rather, he or she is considered a tenant (with an option to purchase). Should he or she choose not to avail of that option by the relevant point in time (unless there that period is extended or rolled-over) he or she will lose that option to purchase and the agreement would revert to a standard landlord-tenant arrangement. The tenant will also likely forfeit any money paid up to that point, including the option fee and any rent credit earned but he or she would not be under any obligation to continue renting or to buy the home.[47]

In the UK, a rent-to-buy arrangement may be attached to a shared-ownership agreement, where the tenant is given an option to part purchase the property under the shared-ownership scheme.[48]

There is no conceivable reason, outside of complexity and transaction costs, why a hybrid model, similar to a lease-purchase arrangement, could not be entered into allowing the tenant to purchase a property incrementally, directly from the vendor, in a similar way that chattels such as cars and industrial plant may be purchased through a lease-plan arrangement.[49]

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[46] Revenue, 'Rent to buy scheme', 10 February 2020 (last accessed 15 May 2020); Revenue, 'Tax and Duty Manual: VAT – Rent to buy scheme' July 2019.

[47] Jean Folger, 'Rent-to-Own Homes: How the Process Works – what to watch for and the steps and choices involved', *Investopedia*, 16 April 2020.

[48] Tom Martin, Uswitch, 'Rent to Buy', 4 September 2018.

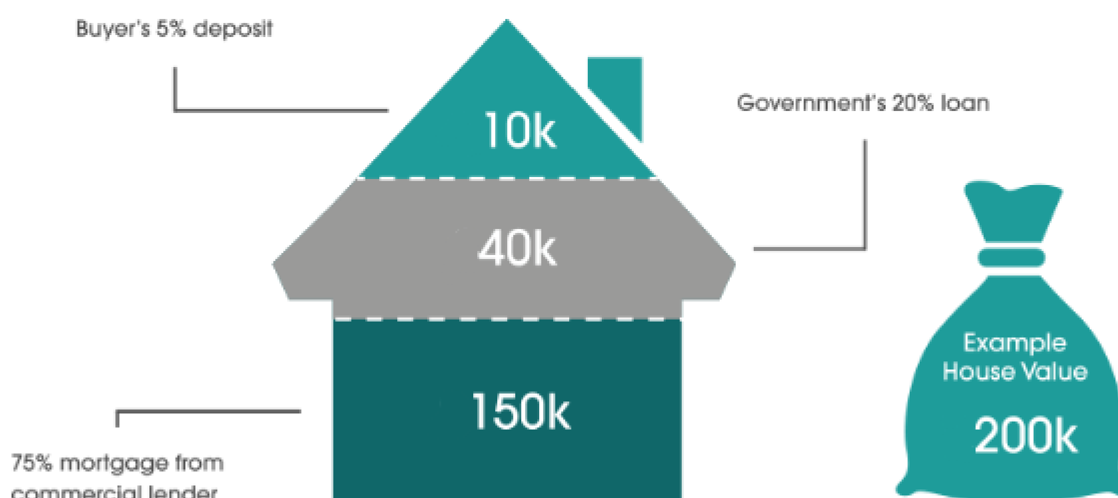
[49] See generally Jean Folger, 'Rent-to-Own Homes: How the Process Works – what to watch for and the steps and choices involved', *Investopedia*, 16 April 2020.

The shared equity loan model

A shared equity loan, as the name suggests, involves the use of a loan (or charge) mechanism. A shared equity loan requires a party (the equity partner) other than the home buyer to commit funds to allow the home buyer to purchase the property, while also allowing the home buyer to retain 'full' home ownership. In return, the equity partner will take a share of the capital gains when the property is sold or the loan is refinanced, and may require the home buyer to pay back part or all of the shared equity loan over a defined period. The big difference between a shared equity loan and a regular mortgage is that the equity partner will generally forgo some or all interest payable on the loan in exchange for a share in any capital gain that has accrued at the point the loan is realised. The benefit to the home buyer is that there are no or low repayment requirements on the shared equity portion, so the home buyer is able to borrow more than they traditionally could through a standard home loan.[50]

As shared equity loans do not affect the form of title, they may be applied to all forms of tenure (freehold, leasehold and even statutory forms of title such as commonhold, strata title or condominium title, in England and Wales, Australia and the United States and Canada respectively). Furthermore, even though these loans are generally targeted at low-to-middle income earners, there are significantly fewer foreclosures on shared equity loans than on mainstream mortgages, given that the payments are usually tailored to the homeowner's means and achievable. However, it is also important to keep in mind that a large investment of capital is needed at the initial stages of a shared equity loan scheme, and this can amount to a big drain on the public purse – in England, by the end of 2019 the total value of equity loans was £15.34 billion.[51]

Figure 7: Example of a shared equity loan arrangement



Source: HM Government, 'Help to Buy: How does it work' (last accessed on 15 May 2020).

[50] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 16.

[51] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 39; UK Ministry of Housing, Communities and Local Government, 'Help to Buy (Equity Loan scheme) Data to 31 December 2019, England', *Housing Statistical Release*, 7 May 2020.

The Irish Affordable Home Purchase Scheme

The Affordable Home Purchase Scheme is a form of shared equity loan scheme, which currently exists in Ireland. The legislation establishing the scheme, Part 5 of the *Housing (Miscellaneous Provisions) Act 2009*, commenced in June 2018.[52]

The scheme allows local authorities to sell dwellings for up to 40% less than their market price. The local authority then maintains an equity stake in the property equivalent to the difference between the sales price and the market price, expressed as a percentage of the market value of the property. The homeowner will be required eventually to purchase the local authority's equity share. The homeowner is given a five-year grace period, and after that period, he or she may choose when to make repayments on the equity share; the homeowner is allowed some freedom to decide the amount he or she wishes to repay at a particular time. The amount of money the household pays to clear the local authority's equity share in the property is proportional to the market value of the home at the time of the repayment.

Even though the buyer holds full title to the property, he or she is compelled to use the property as his or her primary place of residence. Should the homeowner decide to sell, the local authority must be repaid the market value of its equity share.

At present, there are very few affordable purchase homes available. Dublin City Council and South Dublin County Council have each commenced the process of building affordable housing, allocating three sites each to this purpose. Concerns have been raised about Dublin City Council's qualifying requirement, which is to restrict purchases to those who have been living in the surrounding area for at least 12 months.[53]

The English Help to Buy: Equity Loan Scheme

Under the Help to Buy: Equity Loan Scheme in England, the Government lends home buyers up to 20% of the cost of their newly built home (up to 40% in London) so that the home buyer is only required to provide a 5% cash deposit and take out a 75% capital mortgage from a standard mortgage lender (or 55% mortgage in London) to be in a position to purchase a property. The homeowner is not charged interest on the equity loan for the first five years of owning their home. After five years, the homeowner is charged 1.75% on the outstanding amount as interest. The homeowner only pays the interest if he or she fails to enter into and abide by a staircasing arrangement, to repay the equity. There is no requirement to repay the equity loan in full until the subject property is sold, or 25 years have passed. To incentivise paying off the equity loan quicker, the repayment amount increases each year by the retail price index plus 1%.[54]

The subject property must be a new build and valued under the set price cap of £600,000 and the scheme may only be used to purchase a primary place of residence – subletting is prohibited and the potential purchaser may not own any other real property at the point of sale. At present, the

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[52] The Housing Agency, 'Affordable Home Purchase' (last accessed on 29 May 2020).

[53] Deirdre Gilna, 'Schemes in Ireland: help to buy a home in 2020', *Selectra*, 5 February 2020.

[54] Homeowners Alliance, 'Help to Buy equity loan scheme explained' (last accessed on 29 May 2020).

scheme is open to all home buyers but from 1 April 2021 until the scheduled end of the scheme in 2023 it will be restricted to first-time buyers, and new regional price caps will be instituted.[55]

A recent Bank of England study into the Help to Buy: Equity Loan Scheme found that the households who took advantage of the equity loan were disproportionately young, comprising first-time buyers, who would not be able to afford the same property without the equity loan. Yet, many of the other applicants who took advantage of the subsidised equity loan went on to buy a more expensive house, rather than reducing bank leverage and house price risk exposure. A significant proportion of eligible homebuyers chose not to take advantage of the scheme, and did not avail of the subsidised loan, assuming they were aware of the scheme, this behaviour implies that their decision was based in the desire to avoid sharing expected house price increases with the government.[56]

Scotland and Wales operate separate, but similar, equity loan schemes.

Shared equity loans in certain Australian jurisdictions

Victoria and South Australia have well established shared equity loan schemes. In South Australia, the scheme only applies to the purchase of listed Shared Value Affordable Homes, whereas in Victoria, the scheme applies to any home purchase, so long as the potential purchaser is eligible. In Victoria, the potential purchaser must be able to cover a deposit of 5% and arrange the loan portion of the transaction with a participating bank, while in South Australia the potential purchaser may secure finance for his or her portion with any financial institution, and so normal mortgage rules apply with respect to deposits and repayments.

The respective State Governments act like silent partners in the transaction, paying part of the purchase price – this takes the form of a second charge on the property. In turn this reduces borrowing costs to make homeownership more affordable. The homeowner pays the rates, insurances and maintenance on the property in full but does not have to pay rent or interest on the Government's portion of the property.

The mechanism involves 'a shared appreciation arrangement'. The only repayments required are those on the loan. There is no interest or repayment cost on the Government portion, but the government gets a percentage of the capital accumulation (equivalent to its share) on sale or refinance.[57]

The same upfront fees and charges apply to the loan as if the homeowner were taking out a regular mortgage. Fees may include mortgage duty, conveyancing and stamp duty and the owner pays for repairs and maintenance. The owner may make capital improvements to the property – if the improvements are over $10,000, the owner has the opportunity to have the lesser of 'the improved value' or 'cost of the improvement' depreciated and deducted from the 'shared appreciation calculation'.

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[55] Ibid.

[56] M. Benetton, P. Bracke, J. Cocco and N. Garbarino, 'Staff Working Paper No. 790: Housing consumption and investment: evidence from shared equity mortgages', Bank of England, April 2019.

[57] Government of South Australia, 'Shared Value Affordable Homes', December 2012; Victorian Government, 'HomesVic Shared Equity Initiative' (last accessed on 29 May 2020).

At any point in time, the homeowner may pay out the whole of the State Government's equitable stake. However, a valuation is required to determine how much the value of the property has increased (or decreased). If decreased, the government proportionately shares in the loss. In South Australia, the owner must remain in the property for a continuous period of 6 months over the first 12 months of ownership.[58]

The Australian Capital Territory and Tasmania have also instituted shared equity schemes similar to the South Australian scheme, where prospective homeowners pay for 70% of the property and the other 30% is covered by the government. There is a buy-back option included in both these schemes.[59]

Shared equity loans and shared appreciation mortgages in the United States of America

As has been noted by Samantha Evans, Churchill Fellow, in the USA shared equity policy is highly fragmented and reflects a 'patchwork' of policies, regulations and financial instruments. Furthermore, the US securitised mortgage market is large and liquid, squeezing out niche lending products such as shared equity loans. However, shared equity loans are currently offered by the local authorities of San Francisco and New York City as well as by some community land trusts.[60]

Some private lending institutions offer shared appreciation mortgages (SAMs) to investors or regular home buyers. Banks profit from the interest charged on a mortgage, so if a buyer sells the property, the bank loses out on future interest payments. A SAM may help to offset loss of interest on a loan if the property is sold early. SAMs may include a phased-out clause, whereby the lender agrees to reduce the repayments and the interest over a period of time. Other possible clauses could allow the lender's equitable interest to diminish over time, or only require the borrower to pay back the equity stake if the property is sold within a specified timeframe. Such clauses would encourage the owner not to sell the property early (and pay back the SAM).[61]

Shared equity options in New Zealand

In New Zealand, some privately-funded organisations and community housing trusts have offered shared equity products of their own.[62] As these organisations are privately funded, they can choose not to apply any income cap or eligibility criteria but they do give preference to first-home buyers.[63]

One organisation, YouOwn, offers a shared equity loan, covering between 15% and 25% of the purchase price. Although there are no minimum income requirements, a prospective purchaser will

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[58] Government of South Australia, 'Shared Value Affordable Homes', December 2012; Victorian Government, 'HomesVic Shared Equity Initiative' (last accessed on 29 May 2020).

[59] ACT Government Community Services, 'Frequently asked questions: Shared equity scheme' (last accessed on 29 May 2020); Department of Communities Tasmania, 'HomeShare' (last accessed on 29 May 2020).

[60] Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 39; US Department of Housing and Urban Development, Office of Policy Development and Research, ' Shared Equity Models Offer Sustainable Homeownership', *Evidence Matters*, Autumn 2012; Julia Kagan, 'Shared Appreciation Mortgage', *Investopedia*, 1 August 2019.

[61] Julia Kagan, 'Shared Appreciation Mortgage', *Investopedia*, 1 August 2019.

[62] See for example, YouOwn, Dwell Housing Trust, Homes for People, New Zealand Housing Foundation, and Bank of New Zealand (BNZ).

[63] For example, YouOwn, 'About YouOwn' (last accessed on 29 May 2020).

generally need sufficient household income to be eligible for a mortgage on the rest of the property and to save a 5% deposit. The homeowner must pay a fixed monthly fee to YouOwn (based on the value of the equity share at purchase) and the equity loan cannot be paid off for the first five years, which also means that the homeowner cannot sell the property in the first five years. Capital gains or losses are shared relative to ownership and the homeowner is responsible for any outgoings and maintenance. The YouOwn product offering effectively allows a prospective purchaser to negotiate a better loan-to-value mortgage rate, while still only needing a 5% deposit.[64]

In 2018, four Community Housing Providers united to found 'KiwiBuy'. KiwiBuy has campaigned the New Zealand Government to support two proposed products aimed at low-to-middle income earners with children. A shared equity scheme and a Progressive Home Ownership scheme.

The shared equity scheme would effectively offer a top up, allowing prospective purchasers to buy a share in a property by paying only 70% of the market price – the other 30% would be held by the government or third party. The progressive home ownership scheme is similar to a rent-to-buy scheme, and would involve the prospective purchaser renting a new home for a period of up to five years, in which time while he or she uses debt consolidation advice and a 'Kiwisaver' facility to clear debts, build up credit history and save equity to eventually put towards that purchase of a home.

The upfront deposit for each scheme ranges between 0% and 5% of the purchase price.[65] The Government is looking to incorporate these options into their housing policy after the previous 'KiwiBuild' programme (targeting the construction of 10,000 affordable homes over a 10-year period) was disbanded.[66]

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[64] YouOwn, 'How YouOwn works – FAQ' (last accessed on 29 May 2020).

[65] KiwiBuy, 'KiwiBuy makes it possible for ordinary families to own their own home' (last accessed on 29 May 2020); Zane Small 'How a KiwiBuy scheme could work', *NewsHub*, 23 April 2019.

[66] Hon Dr Megan Woods, 'KiwiBuild reset reduces deposit needed to buy first home', Press Release, 4 September 2019; Bonnie Flaws, 'Rent-to-buy schemes could be on the cards; what are they?', *Stuff*, 4 September 2019; Guardian Staff and Agencies, 'New Zealand scraps "overly ambitious" plan to tackle housing crisis', *The Guardian*, 4 September 2019.

Hybrid/subsidised shared equity loan schemes

The Irish incremental purchase scheme

An incremental purchase scheme is currently operating in Ireland. It works like an equitable loan scheme, but it is subsidised – targeted at low-to-middle income earners renting from local authorities. From its inception in 2010, the scheme has applied to newly-built local authority houses and, since 2016, it has been extended to also cover tenants living in existing local authority houses.[67]

To be eligible, a prospective purchaser (homeowner) must have a minimum annual income of €15,000. Through the scheme, he or she pays the market value of the house less a discount (hence a subsidised purchase). Depending on the homeowner's income, the discount will vary between 40% and 60%. The local authority then places a charge on the property called an 'incremental purchase charge', equal to that discount. The charge remains in place for 20, 25 or 30 years (depending on the amount of discount given). Where a tenant's annual income is less than or equal to €20,000, the charge/discount will be for 60% of the purchase price and the charged period is 30 years from the vesting date. Where a tenant's annual income falls between €20,001 and €29,999, the charge/discount is for 50% of the purchase price and it runs for 25 years. Where the tenant's annual income is equal to or in excess of €30,000, the charge/discount is for 40% of the purchase price and the charged period runs for 20 years.[68]

Each year, the local authority unilaterally reduces the value of the charge by 2%. At the end of the 20, 25 or 30 years, the charge is zero, so long the terms and conditions of the scheme have been adhered to. The homeowner must live in the dwelling as their normal place of residence. Selling, letting or sub-letting can only occur with the express agreement of the local authority. If the participant wishes to sell the property at a time that the charge is outstanding, the charge must be cleared out of the proceeds of sale. The homeowner is expected to cover the costs associated with maintaining, repairing and furnishing the property and adequate home insurance must be taken out at the expense of the homeowner.[69]

Finance of the initial purchase falls to the homeowner. However, the homeowner may be eligible for a local authority mortgage, to cover the cost of the initial purchase price. A mortgage taken out for the initial purchase is recognised as a primary charge on the property, and will take precedence over the local authority charge, subject to certain conditions.[70]

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[67] Department of Housing, Planning and Local Government, 'The sale of new local authority houses' (last accessed on 29 May 2020); Department of Housing, Planning and Local Government, 'Tenant (Incremental) Purchase Scheme 2016 - Summary of Scheme' (last accessed on 29 May 2020). See also: Citizens Information Service, 'Buying a local authority house or flat', 7 July 2018 (last accessed on 29 May 2020).

[68] *Housing (Incremental Purchase) Regulations 2010* regs 10, 12, 13 and 14; *Housing (Sale of Local Authority Houses) Regulations 2015* regs 6, 11, 12 and 13.

[69] Department of Housing, Planning and Local Government, 'The sale of new local authority houses' (last accessed on 29 May 2020); Department of Housing, Planning and Local Government, 'Tenant (Incremental) Purchase Scheme 2016 – Summary of Scheme' (last accessed on 29 May 2020). See also: Citizens Information Service, 'Buying a local authority house or flat', 7 July 2018 (last accessed on 29 May 2020).

[70] *Housing (Incremental Purchase) Regulations 2010* reg. 15, Sch. 1 (Tenant Purchase Combined Transfer and Charging Order) cl.5.3; *Housing (Sale of Local Authority Houses) Regulations 2015* reg. 15, Sch. 1 (Tenant Purchase Combined Transfer and Charging Order) cl. 5(2)

There is no specific provision in the scheme to allow the homeowner to make alterations or capital improvements to the property. Also, the scheme does not require any form of subsidy retention – as long as the homeowner adheres to the conditions of the transfer (and the charge) he or she may deal with the property as if he or she were the full owner.

Subsidised shared equity loan schemes in Australia

As part of its Opening Doors to Affordable Housing initiative, the Western Australian Government established a hybrid shared-equity home-ownership scheme. The scheme allows an eligible purchaser to apply for assistance from the Housing Authority to pay for part (in 5% increments up to 30%) of the purchase price of a new home. The scheme is limited to new builds and off-the-plan developments offered by the government's Housing Authority. An eligible purchaser is someone who would not be in a position to avail of a mortgage in the private sector but has the capacity to cover a 2% deposit.

The homeowner is liable for rates, insurance and maintenance of the property. As long as the homeowner complies with the conditions of the Housing Authority's deed and the mortgage, the property will not be subject to periodic inspections. One condition on the deed is that the homeowner must continue to occupy the property as his or her principal place of residence. The homeowner may make capital improvements to the property over time with permission of the Housing Authority under the terms of the co-owner's deed and the loan contract. Capital improvements are credited to the homeowner and taken into consideration when calculating the value of the Housing Authority's share of the sale price.[71]

The scheme allows the homeowner to take out either a fixed or a flexible SharedStart loan for the remainder of the purchase price.

A homeowner who takes out a fixed loan will neither be allowed to sell their share in the home on the open market nor purchase a share back from the Housing Authority – the Housing Authority retains a share in the property. However, the homeowner may sell their share in the property back to the Housing Authority at market value.

A flexible shared ownership loan allows the homeowner to sell his or her share of the property in the open market, but if they do, they would have to pay back the market value of the Housing Authority's share and pay off the SharedStart loan in full. Even with a flexible loan, the Housing Authority retains a first right of refusal to buy the homeowner's share in the property, at market value.[72]

A similar scheme exists in Queensland, assisting existing public housing tenants to purchase a share in the property they are currently renting from the Department of Housing and Public Works. If the property is available to purchase, the tenant may apply for a Pathways Shared Equity Loan. The Department covers up to 40% of the purchase price (maintaining an equity stake in the

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[71] Government of Western Australia, Department of Communities Housing, 'Shared Home Ownership' (last accessed on 29 May 2020); Government of Western Australia, Department of Communities Housing 'Shared Home Ownership: Frequently Asked Questions – Open your mind to the possibility of home ownership with Opening Doors', February 2016.

[72] Keystart, 'All about shared ownership' (last accessed on 29 May 2020); Government of Western Australia, Department of Communities Housing, 'SharedStart Home Loans' (last accessed on 29 May 2020).

property). The size of the equitable stake taken on by the Department is dependent on the income of the prospective purchaser – ensuring that monthly home loan repayments are no more than 35% of the prospective purchaser's gross monthly household income. The homeowner is able to buy further shares in the property at any time (in 5% tranches) by either re-negotiating the loan with the State Government or by paying cash for the additional shares.[73]

[73] Queensland Government, 'Pathways Shared Equity Loan – Become a home owner by purchasing a share of the property you are renting: Questions and Answers Booklet' October 2018.

Making shared-equity homeownership schemes sustainable

As outlined above, there are a large number of shared equity schemes used to make housing more affordable in the English-speaking world. The majority of these schemes require a large amount of capital to both set up and sustain them. Because these schemes are deleterious to the public (and philanthropic) purse, they have been mainly targeted at low-to-middle income earners. They are also usually subject to a number of restrictions and create conveyancing and affordability issues for some participants. Each of these factors limit the marketability of these schemes, threatening their sustainability.

These difficulties could be ameliorated, to some extent, if they were targeted at the wider public – developing a market in shared-equity housing. This may also lead to greater demand for these properties, making them more marketable in the longer term. Promoting private sector investment in these schemes could help to alleviate some of the burden on public funds and make the schemes more sustainable in the long run.

However, in order to properly open up the schemes, it would be necessary to devise a more appropriate form of tenure, that recognises the different ownership interests in the relevant property. A new form of statutory title, a hybrid leasehold/freehold title with no ground rent, could help to simplify conveyancing, better secure tenure, reduce transaction costs and make properties more marketable.

The implementation of a new form of statutory title could form part of a wholesale reform of leasehold tenure. It could be similar to a commonhold, strata, unit or condominium title implemented in the UK, Australia, New Zealand, and the US and most Canadian States respectively. The discussion of how such a reform could be implemented would need to be the topic of a future paper.

See Appendix 1 for some possible examples of how these schemes could be applied by the private sector, assuming a market could be developed in shared ownership housing.

Benefits to the individual and to the community

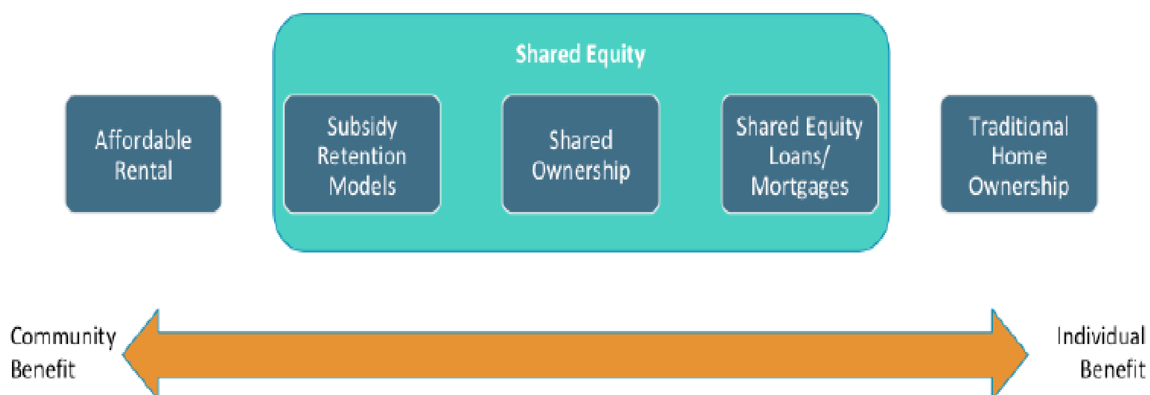
Each of the shared-equity homeownership models provide their own benefits to the homeowner, to the equity party and to the community. Some models focus more on the individual benefits over the community benefits, while the other models do the opposite.[74]

As explained by the Australian Housing and Urban Research Institute, at one end of the continuum are individual or transitional models, whereby gains follow the individual household that initially benefits from the scheme rather than being retained in the property purchased. These models often aim to help consumers gain a foothold on the property ladder and facilitate asset accumulation by the purchaser. The focus of these models is generally on access to the housing market, often targeting first home buyers. They promote staircasing and they do not protect the initial subsidy in the long term. Individual benefit models often afford prospective purchasers the ability to purchase a more expensive property than they would be able to afford.

Community or continuing models aim to protect affordable home ownership opportunities and preserve the supply of homes into the future. In community equity schemes, the equity party typically retains a greater proportion of equity and ongoing interest in the property. The subsidy is retained in the property and any equity gains to individual homeowners are limited, instead of being based upon open market values. The focus of these models is generally on access to the housing market and ongoing affordability for lower income households.[75]

Figure 8 places models of ownership onto a continuum:

Figure 8: Benefits of different shared equity models



Source: Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019, p. 11.

A combination of models may allow for multiple schemes – subsidised shared equity homeownership, a private market in shared ownership and the provision of shared equity loans by the government and the private financial services sector – providing 'homeowners' the flexibility to

[74] See generally, Samantha Evans, '2018 Churchill Fellowship to investigate how Shared Equity can become a mainstream solution to housing affordability in Australia', August 2019.

[75] Australian Housing and Urban Research Institute, 'Case study evaluation: new approaches to delivering shared equity opportunities in Western Australia', December 2013, pp 3-4.

move between these schemes. This flexibility could go some way towards inoculating against the development of a sub-class of homeownership.

The use of a combination of shared-equity homeownership models and hybrid models may deliver the prized balance between affordability and sustainability.

Conclusion

This paper discusses the characteristics and apparent benefits of homeownership and considers whether shared-equity homeownership can deliver these outcomes. By looking at homeownership in this light it becomes apparent that the more individually-focussed shared-equity homeownership models (shared equity loans and unrestricted shared ownership models) have more potential to deliver those outcomes to the wider community in the long term than the community-oriented shared-equity homeownership models (subsidised shared ownership).

Community-oriented models (schemes which are targeted at lower income groups, and often run by State bodies or Non-government organisations (NGOs)) are not universally available, they are subject to restrictions, they pose conveyancing issues and have limited marketability. Although, at the initial purchase stage, a minority stake in a property, marketed as 'homeownership', may satisfy the socio-cultural ambitions of the 'owners' for tenure, limitations on control will eventually dilute these perceptions, as expectations are confronted by the reality of limited control over the asset.

The highly subsidised nature of community-oriented models also affects their long-term sustainability. Yet, because they are highly subsidised, community-oriented models are also far more affordable for the individual homeowner, allowing a socio-economic group that would not normally be able to enter the property market to get a 'foothold' in the market and build equity over time.

Individually-oriented models are less affected by control issues. Instead, they face problems with marketability, sustainability and affordability. The introduction of a statutory hybrid form of tenure could help to better secure tenure, reducing transaction costs and making properties more marketable and, as a consequence, making these shared-equity homeownership schemes more sustainable. However, this will not necessarily make these schemes more accessible to lower income earners. There may always be a need for a subsidised or partly subsidised hybrid model of shared-equity homeownership.

It is apparent that there is no silver-bullet solution. However, a combination of models may deliver the best possible outcome, helping more people get on the 'property ladder'. However, this conclusion is premised on the need to ensure that homeowners retain the capacity to move between schemes, and the need to implement reforms aimed at improving the overall sustainability of shared-equity homeownership.

Appendix 1: Examples of shared equity in an open market

Example 1: Downsizing

A 75-year old widow living in a three-bedroom semi-detached property with a garden in South Dublin valued at €500,000 is struggling to maintain her property. She wishes to move into a co-living development but needs a further €300,000 to pay for the new arrangement. For the present, she wants to maintain a link to her current home but may be willing to give it up over time.

She decides to sell a 60% shared-ownership stake in her home to a young couple with two children (expecting a third), looking to move out of their two-bedroom apartment. The widow uses the capital released from the sale to pay for her move.

The arrangement requires the couple to cover outgoings and to insure and maintain the property. The couple is also liable for rent on the 40% share, at a fixed rate of 2.5% of the value of that portion of the property (updated annually on the 'valuation date').

The couple is given an option to purchase further shares (minimum of 5%) in the property on an annual basis. The couple may sell their accumulated share in the property on the open market at any time.

A failure to maintain the property or pay rent creates a right to statutory damages (not eviction). Capital improvements to the property must be agreed by both parties – the vendor may agree to pay for a proportion of the improvements or to sell a share of her stake in the property to the couple instead – ensuring that the real market value of her share is not diminished.

The property is held through a new hybrid form of tenure, where both 'owners' are listed on the title alongside their respective shares and any conditions of the arrangement. This form of title may revert to freehold when 100% of the property has been secured.

Example 2: Up-sizing from a position of negative equity

A couple with 2 children are expecting a third child. They purchased their two-bedroom apartment in the Dublin commuter belt in 2007 for €350,000 with a 95% loan-to-value 30-year mortgage. Due to circumstances beyond their control they had to renegotiate their loan terms in 2009, electing to move to repayments to an interest-only basis for a five-year period. They then moved back on to their original mortgage terms and have successfully met each payment – they both have secure, well paying jobs.

At present, their apartment has a current market value of €300,000, with an outstanding loan amount of €305,000. After negotiating terms with their lender to transfer the existing mortgage debt into a new mortgage, they have decided to sell their apartment and commit to buying a part share in the widow's house in Example 1. This agreement has allowed them to live in a larger property, more suited to their needs even though they are coming from a position of negative equity.

Example 3: Hedging an investment

A 50-year old self-employed investor has an investment property which he is currently renting out. He hopes to use the capital invested in the property to fund part of his retirement. He has paid off part of the mortgage on the property meaning that in real terms he currently holds a 40% stake in the property. He is concerned that the downturn in the economy resulting from the Covid-19 pandemic could affect his business. Furthermore, the economic downturn may also undermine the capital value of his investment and reduce the amount that he can charge in rent over the middle to long term – affecting his capacity to cover his mortgage repayments.

He decides to sell a 60% share in the property to his tenants, using the capital to pay off his mortgage in full. The tenants are happy with this arrangement as they would not normally be able to afford to purchase this type of property in this area. The tenants also get the benefit of security of tenure. Assuming a similar arrangement to the one outlined in the first example, the investor gets a guaranteed income and an opportunity to hedge the capital risk associated with his investment.

Example 4: Allowing financial service providers into the market

In certain scenarios, banks or even credit unions, through special purpose vehicles (SPVs), may be able to assist individuals to part purchase a property, allowing them to hedge their investment through a guaranteed rental income return on their investment. Banks and other institutional investors may also choose the security of maintaining a capital share in a property through a shared equity loan.

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