

Dealing with a missing relative's financial affairs: Joint property and mortgages (main residence)

This leaflet is intended as an introduction for families looking to deal with a property jointly owned and mortgaged with a missing person, which is both parties' main residence; it does not cover instances in which the property is lived in by the missing person, but not the other family member(s) named on the joint mortgage (for example, it would not cover a scenario whereby a property is jointly owned by a missing person and their siblings, and is the main residence of the missing person but not their siblings). It has been written as a guide and should not be taken as legal advice.

Whilst the majority of missing people are found or re-establish contact within a reasonably short period of time, those absent for more than a few weeks can leave behind practical, financial and legal matters that their family may need or want to look after. This can include issues connected to a joint mortgage held with the missing person.

Having a relative go missing can be an anxious and difficult time, and considering how their absence may impact on their financial affairs may feel like a daunting task. This leaflet aims to guide you in dealing with matters connected to a *joint mortgage* with someone who is missing (information on a *mortgage held solely* by a missing person is on our website at www.missingpeople.org.uk/legalandfinancial), and to answer questions that families most frequently ask Missing People for information on.

I am concerned about my relative's financial affairs in general. Can I formally take control of these on the basis my relative is missing?

There is currently no legal process which would allow you to apply to become the legal guardian of a relative's financial affairs on the basis that they are missing. Whilst this means that you cannot formally manage the joint mortgage on your own (unless you have Power of Attorney over your relative's affairs – see below), you can still contact the provider to discuss your and your missing relative's circumstances and any concerns you may have.

What if I have Power of Attorney over my relative's affairs?

If you already have a Power of Attorney to act on behalf of your missing relative, perhaps because they were ill, out of the country, or lacked mental capacity, or if you are the legal or natural guardian of a missing relative, then you will have the legal right to look after their affairs and can work with the mortgage provider in this capacity. In this instance, the mortgage provider may require you to

provide evidence that you have the legal right to deal with the missing person's affairs.

Should I tell the joint mortgage provider that my relative is missing?

Telling the joint mortgage provider that your relative is missing can be useful in explaining any potential changes to yours or your relative's financial wellbeing. It could also be useful if you later need to approach the provider to deal with a particular issue, as it will already be aware that the person you share the mortgage with is missing.

If the joint mortgage has been arranged through a bank or building society, depending on the circumstances of your relative's case, the police may have made contact with it as part of their investigations; in this instance, the bank or building society may already be aware that your relative is missing. If you would like to find out whether this is the case, you should contact the investigating police force.

How should I contact the joint mortgage provider?

You can approach the provider either in person, if it is a bank or building society and has branches, or by phone. You can get the phone number for the mortgage provider by either searching online or by calling a directory enquiries number (please note these phone numbers charge for their services).

Should I keep the joint mortgage provider up to date with the search for my relative?

By making the provider aware of any significant developments in the search for your relative, you will be able to ensure that it has a good grasp of your relative's circumstances and what stage the investigation has got to.

If there is a period in which there are no developments, you may still want to contact the joint mortgage provider on a regular basis to let them know that this is the case. You could do this every few months, or alternatively you could ask them how often they would like to be contacted.

What should I do if I'm concerned about the joint mortgage repayments not being met whilst my relative is missing?

A joint mortgage is a contract made between a lender and those named on the mortgage. Those named on the mortgage are jointly and severally responsible for the repayment of the loan, and therefore if one person is unable to meet repayments, the mortgage provider may seek these from the other(s) named on the mortgage. This is known as 'jointly and several liability'.

If you are concerned that you will not be able to keep up repayments whilst your relative is missing,

you should alert the mortgage provider to this and seek its advice.

In addition, if you are concerned about you or your relative being, or becoming, in debt and that this could impact on your repayments, you should consider contacting any relevant banks or building societies if they are not already aware of the circumstances. For more information on dealing with a missing person's banking, please see our leaflet 'Dealing with a Missing Relative's Affairs: Banking' at www.missingpeople.org.uk/legalandfinancial.

Can I renegotiate the joint mortgage or arrange for a payment holiday?

Some families have questions as to whether they can rearrange a mortgage held with a missing relative whilst they are away. These may stem from concerns about meeting repayments, or what impact these repayments may be having on their and their relative's overall financial wellbeing.

Strictly speaking, the provider can only alter the mortgage agreement following instruction from both of the mortgage holders; again, the only exception to this is if you have a previously issued court order, such as a Power of Attorney, stating you have the legal right to look after their affairs.

Nevertheless, if you have concerns about your or your missing relative's ability to pay, you should speak to joint mortgage provider to make them aware of your concerns and to see if there is anything that can be done in the circumstances.

Can I pay off the outstanding balance?

If you have the funds, you may consider paying off the rest of the joint mortgage. It is important to understand that if you do so however, that this will not impact on the ownership of the property and it will remain in both of your names. As such, it would not give you any greater rights over the property and the same rules around selling would apply as detailed below. There may also be implications should you one day want to seek this money back.

If you consider this option, it could be very helpful to seek the views of a legal advisor or solicitor, and the mortgage provider.

Can I sell the property?

Without the permission of each person named as joint owner, it is generally not possible to sell a jointly-owned property.

There are a couple of exceptions to this however. First, when you and the missing person acquired the property you may have entered into a 'trust deed'. These types of legal documents usually include the right for either party to force a sale of the property and set out how any equity is to be split on a sale. These types of trust arrangements are usually entered into where, for example,

friends, family members or unmarried couples buy a property together. With this type of arrangement, the joint owners are described as "tenants in common".

For married couples, these types of arrangements are not common. Joint owners, who are not tenants in common, are known as joint tenants. Property held in this way can only be sold with the consent of all joint tenants. If there is a change of circumstances which results in one joint tenant wishing to sell, it will be necessary, to "sever" the joint tenancy in order to convert it to a tenancy in common; then the person who wishing to sell can, ultimately, compel the sale.

If you consider this option, it could be very helpful to seek the views of a legal adviser or solicitor.

Another key distinction between joint tenants and tenants in common, is that on the death of a joint tenant, the deceased person's interest in the property automatically vests in the other joint tenant/s. In contrast, on the death of a tenant in common, the deceased person's interest in the property will form part of their estate. It will not pass automatically to the other tenant/s in common.

Finally, if you have a previously issued court order, such as a Power of Attorney, stating you have the legal right to look after the missing person's affairs, you might be able to explore this area.

What if I believe my missing relative has died?

If, unfortunately, you believe that your missing relative is likely to have died, you could explore presumption of death provisions by way of looking to concluding their affairs – if this is the case, you should seek legal advice as to how to proceed, and to answer any questions around what impact this would have on their assets including property. Our guidance sheets on when a missing person can be declared dead, and what provisions are in place, may be of help here – you can find these at www.missingpeople.org.uk/financialandlegal.

What should I do if I'm concerned about mine and my missing relative's property being repossessed?

If you are living in the jointly owned property and are concerned that it may be at risk of repossession as a result of mortgage repayment arrears, you should contact the mortgage provider as soon as possible to discuss the circumstances.

Mortgage providers must adhere to the 'pre-action protocol' before taking possession action. This encourages greater contact between you and the lender and outlines a range of options that the lender should consider to help resolve any payment difficulties. Whilst this is written with the assumption that the homeowner is present, it clearly sets out the steps that the mortgage provider must undertake before any action is taken, such as notifications that must be made. You can read the pre-action protocol at http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha.

If you are concerned about yours and your relative's property being repossessed, you should speak to the mortgage provider. For more information on owning property and repossession, you may want to visit the Government's gov.uk website at www.gov.uk/browse/housing, which also has details of organisations that you can speak to for support and advice.

You may also want to seek legal advice as to your situation from either your own solicitor or a legal advisory organisation (see our guidance sheet '[Other Sources of help: Legal and Financial Support](#)' for some suggested providers). Speaking to organisations that specialise in housing matters, such as the charity Shelter, may also be helpful; you can reach Shelter on 0808 800 4444 or look at online information at www.shelter.org.uk.

Who can support me through this time?

Missing People recognises that dealing with a missing relative's financial affairs can be both daunting and upsetting. The team is available around the clock if you would like to talk about how you are feeling throughout this process. You can reach them by calling or texting **116 000**, or by emailing 116000@missingpeople.org.uk.

In addition, if your relative being missing is making you concerned about your own finances, see our guidance sheet '[Other Sources of help: Legal and Financial Support](#)' for details of organisations that may be able to provide you with support and advice.

For a copy of this guidance via post, please call **116 000**.

This leaflet has been produced with the kind assistance of Clifford Chance LLP.

Missing People would like to thank the Santander Foundation for supporting the production of financial guidance for families of missing people.



First Published: February 2013.

For further information and guidance on the issues addressed in this guidance sheet, or for support relating to any aspect of someone going missing, call Missing People's free and confidential 24 hour helpline on **116 000** or email 116000@missingpeople.org.uk

Whilst this information has been provided in good faith, it should not be taken as legal advice. For information tailored to your circumstances, please contact your police force, solicitor or an advisory organisation as appropriate to your query.

Please let us know whether this guidance has been useful, either by answering a few short questions at <https://www.surveymonkey.com/s/MissingPeopleGuidance> or by emailing your comments to policyandresearch@missingpeople.org.uk