

Guidelines For Muslims On Purchasing And Owning An HDB Property Under Joint Tenancy






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Introduction

Take a moment to decide how you want to buy the HDB flat. Your decision will have an impact on how this property passes after you die.

If you buy the flat in your own name, when you die, it will pass to your faraidh beneficiaries.

You can also buy the flat jointly with someone else, such as your spouse or other members of your family.

There are two ways that you can do so,

- under a Joint-Tenancy
- under a Tenancy-in-Common.

In this booklet you will find information on

- the two ways of buying a flat with someone else
- the fatwa issued by the Fatwa Committee in 2008 on this matter
- how your decision can benefit your co-owner on your death, in a way which is accepted by Islamic Shariah.



JOINT TENANCY & TENANCY-IN-COMMON

What is Joint-Tenancy?

A joint-tenancy "is a form of ownership where all co-owners have an equal interest in the flat, regardless of the individual owner's contribution to buy the flat. In joint-tenancy, there is a right of survivorship. This means that upon the death of a joint-tenant, his/her interest in the flat will automatically be passed to the remaining co-owner(s), regardless of whether the deceased joint-tenant has left behind a Will."¹

What is Tenancy in Common?

Under Tenancy-in-Common, "each co-owner holds a separate and definite share in the flat. However, all the co-owners are entitled to live in the whole flat, regardless of their share in the property."²

The right of survivorship does not apply here. On the death of any co-owner, his interest in the flat will be distributed according to his will (if any). If there is no will, his interest in the flat will be distributed to the beneficiaries in accordance with the Intestate Succession Act for non-Muslims, or the inheritance laws (faraidh) for Muslims.

You may wish to seek further clarification from HDB on the difference between these two schemes.



¹ <http://www.hdb.gov.sg/f10/f10326p.zsf/w/ChgOwnerTypesOfTransfers?OpenDocument#TenacyInCommon>

² <http://www.hdb.gov.sg/f10/f10326p.zsf/w/ChgOwnerTypesOfTransfers?OpenDocument#TenacyInCommon>

What is the Fatwa issued by the Fatwa Committee on buying and owning an HDB property under Joint-Tenancy?

The Fatwa Committee has issued a fatwa on this in April 2008. The fatwa states that if no other arrangement has been made between the joint-owners of a property, upon the death of one of the joint-owners, the surviving joint-owner will not have full ownership of the property. The surviving joint-owner will only be entitled to half (50%) of the value of the property. This (50%) entitlement arises from his/her position as a joint-tenant.

The other heirs of the estate of the deceased cannot, however, compel the surviving joint-tenant to sell the property until such time as it is suitable for the surviving joint-tenant to sell it. At the same time, the surviving joint-tenant cannot delay the sale of the property without reasonable grounds as it may encroach on the rights of other beneficiaries.

If an arrangement has been made between the joint-tenants, either through a *"hibah ruqba"* (ruqba-gift) or a *"nuzriah"* (vow) which expressly states that the property is to be given wholly to the surviving joint-tenant, on the death of one of the joint-tenants, the entire property shall vest in the surviving joint-tenant.

What is this "arrangement"?

The fatwa states that Muslims who own homes as joint-tenants can ensure that it will be fully-owned by the surviving joint-tenant after his/her death.

This is through entering into an arrangement called *nuzriah* or *hibah ruqba*, after the purchase of the HDB flat. This ensures that the intention is expressed clearly, and that the ownership transfer process can be effected according to Shariah. This will also mean that the property is no longer considered as part of his/her estate to be distributed according to *faraidh*.



Why is it necessary to draw up an additional document?

The fatwa aims to provide 2 options for Muslims who own a property under Joint-Tenancy :

- (1) The first option is for the home to be fully owned by the surviving joint-tenant after the death of the other joint-tenant.
- (2) The second option is for the home to be benefited by the beneficiaries (legal heirs) thus applying the rules of faraidh.

It is the responsibility of all Muslim home-owners to assess the conditions of his/her family and choose the option which better suits and fulfills the needs of his/her family and dependants. Both of the above scenarios occur in our community, and it is essential for a fatwa institution to maintain options for the community. Thus the Fatwa Committee recommends Muslim home-owners who are inclined towards the first option to draw up a nuzriah or hibah ruqba document. This is to ensure that his/her intention is expressed clearly, and that the transfer of ownership is effected in a manner accepted by Shariah.

NUZRIAH & HIBAH RUQBA

What Is a Nuzriah?

"Nuzriah" is derived from the word "nazar" which means a vow. A nazar is an expressed vow to do any act or dedicate property for any purpose allowed by Shariah.

What is the Islamic ruling for making nuzriah?

A nuzriah made to protect the interests of the living so as not to cause any injustice to them subsequently, is a permissible nuzriah.

If a nuzriah is made with the intention to do injustice to legal beneficiaries, then it is forbidden in Islam. Allah says in surah Al-Baqarah, verse 279: *"Deal not unjustly and you shall not be dealt with unjustly."*

On the other hand, a nuzriah made to ensure the well-being of another party after a person's death is permissible in Islam. For example: someone who makes nuzriah to give his house to his wife so that the house will not be sold and distributed among his legal beneficiaries. The nuzriah is permissible in Islam if it is made with the intention that his wife will still have a house after his death.





What are the conditions to a valid Nuzriah?

Nuzriah is valid by Shariah if the following requirements are satisfied:

- i. Sighah (the article of nuzriah) is correctly made/written.
- ii. It is witnessed by two male Muslims who are 'adil (not a fasiq).
- iii. It specifies a fixed period before death, so that the nuzriah can be implemented.
- iv. It is made by a person of sound mind and health and not suffering from terminal illness.

What is a Hibah Ruqba?

Hibah Ruqba is a form of gift. It is effected when the giver says: *"This property is yours as ruqba; if you should die before me, the property becomes mine and if I die before you, the property becomes yours."*

What is the status of Hibah Ruqba under Islamic law?

Jurists have different views on hibah ruqba, and it is a matter of ijtihad among the scholars. However, an old opinion from the Shafie school of fiqh accepts both the agreement (aqad) of hibah ruqba and the condition stated therein as valid.

Where can I go to make a Nuzriah or Hibah Ruqba?

You are advised to seek assistance from **lawyers** or **financial advisers** to draw up the Nuzriah or Hibah Ruqba.

Can a Nuzriah or Hibah Ruqba be cancelled?

A nuzriah and a hibah ruqba are agreements which one should consider **carefully** and not take **lightly**. However, if the need arises for one to **cancel** his/her nuzriah, he/she is required to perform one of the **following** as a form of **penalty**:

- a) Provide food for 10 poor people with the type of foods that he **usually** consumes; or
- b) **Clothe** 10 poor people; or
- c) Fast for three days.

No specific **penalty** is required for a hibah ruqba as the gift is not **fully** transferred. However, **revoking** a gift after making a commitment to give without a **valid** reason is regarded as **unethical** in **Islam**.

The **revocation** or **cancellation** of a Nuzriah or Hibah Ruqba should be **clearly** expressed in writing. You are advised to **consult** your **legal** or **financial** advisers.

**If you have any queries please contact your
legal adviser or financial adviser.**



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