

BUYING A PROPERTY IN JOINT NAMES

There are two ways in which a property can be owned by two or more people, either as “Joint Tenants” or as “Tenants in Common”.

OPTION 1 - ‘Joint Tenants’

Ownership as joint tenants means that each joint owner effectively owns the whole of the property. When one joint tenant dies, his / her interest in the property disappears as it passes automatically to the surviving tenant. No part of the property can therefore be transferred on the death of a joint tenant to anyone other than the surviving joint tenant whether under the deceased joint tenant’s Will (no matter what it says) or under the intestacy rules (if no will exists). The surviving joint tenant automatically owns the whole of the property.

In the event of a sale during the joint tenants’ lifetimes, the general rule is that they will be entitled to equal shares of the net sale proceeds, even if one has made a greater contribution. Note however that exceptions to this general ‘equal interests’ rule can and do arise in divorce or civil partnership dissolution proceedings and can also be imposed by the Court on the contentious separation of long-term partners.

The legal term for this joint ownership is that the property is held as ‘Joint Tenants’. Many married couples, civil partners and some long-term partners do hold property in this way. However it will not always be appropriate.

If the property is held this way it is important for a Will to be prepared to decide what is to happen to the property on the death of both co-owners.

OPTION 2 - ‘Tenants in Common’

Ownership as tenants in common means that each joint owner owns a separate and distinct share of the property. They can agree to hold in equal or unequal shares (for example, two owners as tenants in common could hold 50% each, or 70% and 30% etc.)

When one tenant in common dies, his / her share in the property will pass to the person named in their Will. If no Will exists, it will pass under the intestacy rules. **It is therefore very important that owners who hold property as tenants in common make Wills.**

In the event that the property is sold during the lifetimes of the tenants in common, the net sale proceeds will be split according to their respective shares in the property.

The legal term for ownership of this kind is that the property is held as ‘Tenants in Common’. Circumstances in which you should consider this option are where:-

- either co-owner has a child or children from a previous relationship;
- the co-owners are an unmarried couple or have not entered into a civil partnership;
- one co-owner does not wish the property to pass on death automatically to the surviving co-owner;
- co-owners make unequal contributions towards the purchase price and / or deposit;
- co-owners will make unequal contributions to the mortgage payments and / or maintenance of the property; or
- business partners are buying together.

If ownership as tenants in common is chosen:-

- it is recommended that the precise agreement between the co-owners is documented in a formal Declaration of Trust or Cohabitation Agreement (and that this document is then updated regularly to reflect any changes in the co-owners' circumstances);
- it is **vital that each co-owner makes a Will** setting out what is to happen to their share in the property on their death; and
- it is also recommended that a restriction be entered on the title to the property at the Land Registry to protect the value of any deceased's co-owner's share in the property on their death

Mortgages

Please note that no matter which type of joint ownership is chosen, ordinarily, each and every co-owner will be liable to the mortgage lender for the **full** amount of money owed on the mortgage.

Converting from Joint Ownership to Ownership in Common and vice versa

It is possible to convert joint tenants ownership into ownership as tenants in common at any time by one co-owner giving notice to the other and to the Land Registry and vice versa. i.e. tenancy in common to joint tenancy

It is also important to note that in disputes between co-owners, the Court can make an order stating that the co-owners are entitled to unequal shares. In these circumstances the court will specify what those shares are to be.

Declaration of Trust

As joint owners you may require a Declaration of Trust which is a more detailed document that deals with joint ownership. It often includes information such as how much each party contributed to the purchase price, the share that each party intends to hold in the property, how the property is to be divided if the parties separate and what the parties responsibilities are in respect of any mortgage or other outgoings. This document would also deal with contributions and repayments on capital expenditure such as building an extension and income expenditure eg sharing of household expenses.

Wills and Other Private Client Matters

As you will note from the above, it is **crucially important** to take proper advice and make a Will (**however you hold your property**).