

# JOINT OWNERSHIP

## Your Questions Answered



### 1. What is Joint Ownership?

This occurs when two or more people are recorded as being the owners of a house or land or other property (e.g. a flat). However, it is not enough to have the property registered in joint names. You must also decide what kind of ownership (the legal term is *Beneficial Ownership*) you have as joint owners. There are two choices and the difference between the two types of joint ownership is important. It will affect what share in the property you each have, and what happens if you separate, or one of you dies whilst you jointly own the property.

The decision you reach will enable us to prepare the land Transfer Deed and ascertain whether you should make a separate Trust Deed. You do not have to have a Trust Deed, but if we recommend that you should, it would be unwise (and possibly costly in the future) for you not to make one. If you were to buy the property together without clearly defining the shares which each of you is to own, a Court might have to decide in the future. This would be expensive, and could give unexpected (and what you might feel are unfair) results. Hence, we would like you to record your decision in the attached form of Declaration and Instruction to us.

### 2. What are my rights as a Joint Owner?

The property can be jointly owned in two ways. You can be **Joint Tenants** or you can be **Tenants in Common** (a legal expression – nothing to do with renting).

If you chose to be **Joint Tenants** :-

- You will *automatically* be treated as having equal interests in the property. This means that if you split up and sell the property, you will share the proceeds equally, even if one of you has paid much more towards the cost of your property or the mortgage repayments or the property's running costs and general outgoings.
- If one of you dies, the survivor will *automatically* own all the property which was jointly owned.

If you chose to be **Tenants in Common** :-

- First, the property will be owned in the shares that you decide and declare in the Transfer Deed or Trust Deed. These shares **may** be 50% each, but can be any other division that you agree. If no declaration is made then equal shares is implied but this can lead to dispute in the future and may mean that a Court must decide your shares.
- Second, the survivor will not automatically get the share which belongs to the owner who dies first. This will only happen if the deceased leaves that share to the survivor in his or her Will, or (unusually) the survivor is entitled to that share under the laws of intestacy (laws that govern the inheritance of property of those who die without having made a Will)
- It is therefore essential that every Tenant in Common to make a Will. If there is no Will, unmarried people who live together **do not** automatically inherit from each other, no matter how long term they have been together and even if they had children together (the law does not recognise the so called "common law spouse". Even the rights of widows and widowers to inherit are strictly limited if there is no Will). Our Wills and Probate Department can prepare a Will for you. A separate charge will be made for this.

### **3. What do you recommend for a married couple or a same sex couple in a Civil Partnership?**

Most couples in a stable relationship prefer a joint tenancy, which, if the relationship breaks down, can easily be converted by one of them into a tenancy in common in equal shares.

However, there are times when a married couple or civil partners should not chose to be Joint Tenants, so please check if any of the following issues apply to you :-

#### **3.1 What if one of us has children from a previous relationship?**

Whether or not you are married, if one or both of you have had children with a previous partner then one or other of you may wish to leave some or all of your share in the property to those children. To do this, you would need to be *Tenants in Common*. That said, you will both probably want to arrange matters so that if one of you dies, the survivor has enough to continue to be able to live comfortably. There are various possible arrangements. For example: you could agree that the property would be sold and that the survivor will receive a particular share or that the survivor will have the right to live in the property until his or her death, and that the property will then be sold with the proceeds being split in a particular way. A Trust Deed, made at the same time as the purchase of the property, can deal with such arrangements.

#### **3.2 What if one has contributed much more than the other to the purchase price?**

Remember that if you are not a married couple or civil partners and you chose to be Joint Tenants, you will both, or all, have equal interests in the property. Only you can decide whether this is what you really want. If you think this might be unfair to one of you, you can chose to be Tenants in Common, but you will have to agree what your shares will be. This should be recorded in the Transfer Deed or (more usually) a Trust Deed.

#### **3.3 What if one of us is in financial trouble?**

If you (for example) should owe money and go bankrupt in the near future, you cannot keep your money away from your Creditors (those to whom you owe money) by using it to buy property in your partners name or by transferring property you already own to your partner. If you are made bankrupt, property that is bought or transferred in this way can be clawed back and sold for the benefit of your Creditors who are paid before any sum left over goes to your partner.

Whilst bankruptcy does not often affect property owners there are other ways which Creditors can ask the Courts to allow them to obtain money using a property co-owned by someone who owes them money. Therefore, if you feel that there is a chance that your partner might get into serious financial difficulties, you should *not* hold the property as Joint Tenants if your contribution to the purchase price is larger than your partners. If you do hold as Joint Tenants and your partners debts result in a Creditors claim against your property, you could find that your larger contribution results in your having made an unintended gift to your partners Creditors as the fact that you hold as Joint Tenants means that any Court Judgment in favour of Creditors will assume you and your partner have equal financial shares in the property.

In short, if either of you are in financial difficulties, you should take advice from an experienced advisor before buying property together.

### **4. What do you recommend for an unmarried couple or a same sex couple not in a Civil Partnership?**

A tenancy in common, without any doubt. You should also protect your interests by having a Cohabitation Agreement and ensuring that both of you make a Will. Failure to take these steps can lead to most unsatisfactory consequences on break-up or death. You should discuss the situation with your Solicitor.

### **5. What happens if we have agreed that we own the property in unequal shares e.g. one third/two thirds?**

You should ask your Solicitor to draw up the documents to record a tenancy in common in the shares

which you have agreed.

**6. My spouse bought our present home in his/her sole name. Should I be doing anything to safeguard my rights?**

You can register your interest at any time during your marriage. Your Solicitor will arrange this for you. In the event of divorce the Court normally treats the matrimonial home as jointly owned in equal shares, even if it is in the name of one spouse only.

**7. What happens if I am in a Civil Partnership and our joint home was bought by my partner in his/her sole name?**

Your rights are exactly equivalent to those of a married couple under the answer to question 6 above.

**8. What if we cannot agree what we should do?**

If you have difficulty agreeing or one of you feels under pressure to agree, you should think very carefully about whether you want to buy the property together at all. If either of you want advice on your personal position separately from your partner, we can suggest where you can get this by being separately advised.

**9. A relative is helping us buy the property. What should we do?**

It would be wise for your relative's rights to be agreed and recorded now, so as to help future misunderstanding or dispute. For instance, is the payment to be regarded as a gift, a loan or a joint share in the beneficial ownership of the property. Is the relative intending to occupy the property? Your relative should receive independent advice. These points can be included in a Trust Deed.

**10. Should we be concerned about Inheritance Tax?**

Property prices have outstripped the threshold for Inheritance Tax (IHT). This tax affects an increasing number of property owners.

No IHT is payable if one spouse or civil partner inherits from the other. However, this exemption does not apply to unmarried couples. If you are unmarried and not a civil partner and one of you has assets which exceed the IHT threshold then the value of that persons share in the property, whether owned as Joint Tenants or Tenants in Common, is counted towards the value of his or her estate for IHT purposes. The need to pay this tax could mean the property having to be sold and the survivor having to leave it.

Also, whether or not you are married, if one of you inherits the others share in the property, so that both of your shares are lumped together, the survivor would have a larger stake, which could mean a large IHT bill when it is next inherited. You can take steps now to reduce future IHT by consulting a professional tax advisor *before* you complete your purchase. We are able to offer the services of an Independent Financial Advisor. Please contact David Wright of Woodgate Financial Services. Details available on request.

**11. If we split up, will the property automatically be sold?**

If you are married or civil partners, the Divorce Court will decide what happens to your property. If you are not married and one of you applies to the Court, the Court will order a sale. If there is good reason (for example there are young children) the sale may be delayed. If you have a Trustee which restricts the power of sale, the Court will pay attention this.

**12. Can we change our minds about Joint Tenancy / Tenants in Common?**

Yes. If you are Joint Tenants, either of you can end the Joint Tenancy and create a Tenancy in Common whenever you wish by giving a notice to the other Tenant. This is called severance. You should take advice if you intend to do this. If you are Tenants in Common, you can become Joint Tenants but only if both, or all, of you sign a Trust Deed which creates the Joint Tenancy.