

## Client Guide to Joint Ownership

### What is Joint Ownership?

As you are buying the property together, you will each be a co-owner. As co-owners, you can hold the property in one of two ways:

- As joint tenants.
- As tenants in common.

"Joint tenants" and "tenants in common" are ways of describing how you **own** the property: the terms have a different legal meaning to the type of tenant who rents a property from a landlord.



### Joint Tenants

If you hold the property as joint tenants, both of you will own the whole of the property. You will not each have a quantified share in the property and will not be able to leave a share of the property in your Will.

If you sell the property, or if you separate, it will be presumed that you both own the property equally, regardless of your respective contributions to the purchase price. On the death of one co-owner, their interest in the property would automatically pass to the remaining co-owner without any further action. The surviving co-owner would then own **all** of the property and on their death it would form part of their estate. This is known as the "right of survivorship".

Married couples or those in a civil partnership commonly use this method of co-ownership because the right of survivorship makes it straightforward to inherit each other's shares in the property.

However, there may be reasons not to become joint tenants. For example, if one of you has made a larger contribution to the purchase price of the property and you would want this to be recognised if the property is sold or if you separate. A joint tenancy is also not suitable if you have a family from an earlier marriage and wish to leave your interest in the property to them, instead of passing it to the other co-owner.

You should be aware that where you hold the Property as joint tenants:

- either party can sever the joint tenancy without the other's agreement; and
- the joint tenancy may be severed automatically in several situations, including where one party becomes bankrupt.

## Tenants Common

If you hold the property as tenants in common, each of you will own a specified share in the property. Your shares may be equal, but they do not have to be.

Your share of the property can be passed on to another person, either during your lifetime or under your Will. If you do not have a Will at the time of your death then your share will pass in accordance with the rules of intestacy.

If you wish to hold the property as tenants in common, then you should sign a Declaration of Trust. A Declaration of Trust is a document that formally records that you hold the property as tenants in common and sets out your respective shares in the property. If you sell the property, or if you separate, the Declaration of Trust will be referred to, to work out your entitlement to the sale proceeds from the property.

In the event that there is no Trust Deed or the Trust Deed does not contain specific instructions as to the ultimate sale of the property then either tenant in common may apply to the Court for an Order for Sale.

A tenant in common may transfer or assign his share in the property and his share will devolve to his beneficiaries.

Generally, married couples will own their home as joint tenants. They may wish to consider owning their homes as tenants in common where they are worth in excess of the Nil Rate Band for Inheritance Tax purposes, are undertaking a series of tax planning measures, or where there are children from a previous marriage.

Your decision will, of course, depend on whether either of you have made or are intending to make more of a contribution to the value of the Property than the other, or a member of your family has provided some money towards the purchase. If this is the case please let us know. Alternatively, you may feel that it is necessary for a certain percentage of the eventual value of the Property to be available to either of you should you subsequently decide to sell the Property and live separately.

If you are married but wish to own the property as tenants in common for some reason, i.e. to protect an unequal contribution to the property in the event of a divorce; then we recommend that you seek independent legal advice on how to protect your interest prior to completion of the purchase. This is because Matrimonial Law would dictate how the property is divided on divorce and any Declaration of Trust would only be one of a number of factors the court can consider in their decision making regarding the distribution of matrimonial assets.

If you are not married at the time of entering into the Declaration of Trust and remain unmarried then this document would be a very important factor in any future dispute regarding the division of the property on separation. However, if you are intending to get married in the future then prior to your marriage we recommend you seek independent legal advice on how to protect your share in the property as if you subsequently divorce Matrimonial Law will dictate how property is divided as set out above.

## Example

Ben and Sally are an unmarried couple who bought a house together for £400,000 ten years ago.

Sally put in £200,000, Ben put in £100,000, and they had a mortgage for £100,000.

The house was bought in their joint names, they didn't want to think about the way in which they jointly owned the property at the time they purchased it, so by default they own it as joint tenants.

Soon after buying the house they decided to start a family and had two children. However the relationship broke down and Ben moved out the property and bought another house with a new partner. Sally stayed in the house and paid all the bills. Neither took legal advice.

Ben eventually wanted to take his share out of the house. Sally refused to sell. The court decided the Ben was only entitled to 10% of the value of the property. Had Ben taken legal advice and agreed with Sally to convert the ownership tenants in common, 70% to Sally and 30% to himself, when he moved out, he might have kept his share.

## Other things to consider...

### Unmarried?

If you are married it is very important now to consider how you will legally own the property, whether that be half each or in some other proportion. What you agree now may well decide what happens to the property and the division of monies when the property is sold should one of you die or in the event that one of you decides to sell the property due to a relationship breakdown.

### Married?

If you are married (or in a civil partnership) and your relationship breaks down, then the family law courts have the power to decide what happens to the property, and might over rule any decision you make now. However it is still important to decide what shares you wish to hold the property in now, as the decision will effect what happen when one of you dies. There could also be important tax implications to think about.

### Business Property?

If you are buying the property as business partners, as an investment or a buy-to-let property, then it is absolutely vital that you decide the proportions of your shares in the property and what will happen if one or both of you want to sell it. You will probably want to hold it as tenants in common, and have a Declaration of Trust, formally setting out the ownership arrangement and how the property will be managed.

## Next Steps.....

How you wish to hold the property must be your own decision and is something that you should keep under review following the purchase of your property. If you decide to hold the property as joint tenants but then wish to split your interests, you can "sever" the joint tenancy and turn it into a tenancy in common at any time.

It is important to specify now how you wish to hold the property, to avoid any uncertainty in the future. If you have any queries regarding the ownership of the property please do not hesitate to contact me.

Otherwise, I should be grateful if you would confirm which method of co-ownership you would prefer to hold the property under by completing Box 7 of the Purchase Information Form.

Please note our additional costs for preparing a Declaration of Trust are £175.00 plus VAT.

## Example

Robert and Diane are an unmarried couple, who both have children from previous relationships.

Robert is putting £200,000 into their new home and Diane is putting in £100,000.

The house is put into their joint names.

They made decide to own the house as joint tenants. If Robert dies, his share will go to Diane, not to Roberts Children. If Diane then dies, her share will go to her children, or in accordance with her will. Diane may leave part of the house to Robert's Children in her will, but she may change it after Robert's death.

If they decide to own the house as tenants in common, in shares, 60% to Robert and 40% to Diane, then if Robert dies, his share will go to his children or in accordance with his will. When Diane die her 40% share in the property will then go to her children as per her will.

They may decide to make mutual wills, allowing the other party to live in the house until they die, only then will the respective shares be divided up in accordance with their wills.