

Guide to Joint Ownership

Introduction

Whenever you are purchasing a property in your joint names, it is extremely important that you understand the ways in which you can hold the beneficial interest in the property and the effect that this will have on any division of the future sale proceeds – for instance on the sale of the property, divorce or breakdown of your relationship, dispute with co-owners or eventually on your death or the death of your co-owner.

The purchase of property is usually the biggest investment you make and the way in which you own the property should be given particular consideration, taking into account a number of factors to include:-

- Whether you are currently married or in a civil partnership; or not;
- Whether you are contributing equally to the equity of the property;
- Whether you are receiving a gift from a family member to either one of you; or it is a gift to you jointly;
- Who is going to pay the mortgage [if there is a mortgage];
- How you are going to finance any improvements to the property in the future;
- Whether you will repay part or all of your mortgage in the future from an inheritance.

It is a sad fact that most disputes in this area occur between unmarried co-habitees, but these disputes can also arise between family members, friends, or business partners who purchase property together.

We have to advise you of the problems which may arise if consideration is not given to this issue which include:-

- The possibility of dispute;
- Becoming involved in expensive litigation at a later stage;
- The possibility that the Court will divide the property in a way that is different from what you had intended

There are also different assumptions made in the event that you are unmarried relating to ownership of property, and it can be very complex and expensive if the matter needs to be resolved.

How you can own the beneficial interest in property

There are two ways:-

Beneficial joint tenants

What is the effect of holding as beneficial joint tenants?

As joint tenants, you are deemed to hold the property in equal undivided shares and this is so whatever provisions may have been made in your Wills. In other words, you will be regarded as owning the whole of the property and the net proceeds of its sale belonging to all owners as one.

What happens if one of you dies?

If you hold the property as joint tenants, then on the death of either of you the property will automatically vest in the survivor. All that has to be produced to the Land Registry is a copy of the death certificate for the property to be transferred into the sole name of the survivor.

What happens if you sell the property whilst you are both alive?

If the property is sold, it will be assumed that the net proceeds of sale will be divided on a 50/50 basis if there are two co-owners, whatever you each put into the property at the time of purchase, or afterwards by way of improvements/mortgage contributions.

Can you change the way you hold the property at a later date?

If you decide to hold the property as joint tenants, but at a later date decide that you wish to hold the property as tenants in common, then you can change the way you own the property. However, if one of you decided unilaterally to sever the joint tenancy and hold as tenants in common, this would be on the basis that you would own 50% each, irrespective of what you had each contributed to the purchase price. It would only be with agreement of all co-owners that you could set out an unequal share.

When would it be unsuitable to hold the property as beneficial joint tenants?

There are many different scenarios in which we would not advise you to hold the property as joint tenants, because it would not adequately protect your investment. These would include, but it is not an exhaustive list:-

- Where you are unmarried or not in a civil partnership;
- Where one of you has received a gift towards the purchase price from a relative/friend;
- Where one of you is contributing more to the purchase price;

- Where you are not paying the mortgage jointly;
- Where one party intends to invest a future inheritance or funds into the property for renovations/improvements;
- There may be instances where it is not suitable for a married couple to hold a property as joint tenants.

Beneficial tenants in common

What is the effect of holding as beneficial tenants in common?

If you hold the property as tenants in common, it means that you each hold a separate divided share of the property. You can hold in any proportions which can be either equal or unequal, for example, 50/50, 40/60 and so on.

What happens if one of you dies?

If one of you were to die, then the deceased's owner's share will pass in accordance with the terms of that person's Will, or under the rules of intestacy (usually next of kin) if no Will has been made.

What happens if you sell the property whilst you are both alive?

The proceeds of sale would be divided in accordance with the shares you hold in the property – either equal or unequal – as you indicated when you purchase the property.

Can you change the way in which you hold the property at a later date?

If you do decide to hold the property as tenants in common, but at a later date decide that you wish to hold as joint tenants, then this change is possible.

Express declaration of trust – a Trust Deed

When holding the property as tenants in common, we would strongly advise you to have a Trust Deed, which we consider is necessary. This is also known as 'Declaration of Trust' or a 'Co-Ownership Agreement'. This Trust Deed should be entered into at the same time as the purchase transfer document. It records what has been agreed between you at the time of the purchase and will be binding on the current law, unless there has been fraud or mistake.

This Trust Deed is aimed at reducing the risk of misunderstandings or future difficulties when buying with someone else and is aimed at protecting you. This Firm always advises that this should be prepared. It will avoid the costly litigation if there is a dispute in the future.

A Trust Deed can include information such as:

- Your respective contributions towards the purchase of the property;
- How the equity of the property is to be divided when the property is sold, once any mortgage has been repaid;
- What will happen if one owner wants to sell and the other does not;
- How each owner is contributing towards repair of the property and payment of utilities;
- What happens if there is future investment in the property by one or other of the co-owners;
- How each owner is contributing towards the mortgage repayments, (if applicable);
- An inventory of who owns which items of furnishings.

The above list is not exhaustive. Your Trust Deed will be specifically tailored to your requirements.

Costs of preparing a Trust Deed

Our usual costs for preparing a simple Trust Deed are £300 plus VAT. Our costs will increase for a more complex Trust Deed and we will be happy to discuss this with you and provide a detailed quote.

The importance of making a Will

When holding as tenants in common, you should also consider what will happen when one of you dies. It is possible that the surviving joint owner of the property will have no control over the deceased's beneficiary who may wish to live in the property, or insist on a sale of the property to realise his/her interest. A Trust Deed can include a provision stipulating exactly what should happen to the property if the joint owner dies.

You may like to consider giving the surviving owner the right to reside in the property for as long as he/she would like and/or the power to purchase an alternative property on similar terms. In this instance, in addition to including a provision to this effect in the Trust Deed, it would be essential to give a direction to your respective Personal Representatives in your Wills.

There may be slight inheritance tax advantages in holding the property as tenants in common which is dependent on your overall assets. There may also be potential benefits in respect of care home fees but this is a matter you would need to consider in conjunction with a review of your Wills. Our Private Client Team have experts in this field, who would be pleased to advise you and discuss Inheritance Tax Planning.