

Co-Ownership Information

Why do I need to consider ownership types?

An unmarried couple buy a property and cohabit, or business partners decide to purchase a property with a view to let it or develop it. Probably the last thing on their mind is, who owns what share in that property. In any situation relationships may break down, bankruptcies do happen and circumstances can change. For these and other reasons, it is essential when buying a property to discuss and record who is to own it. A failure to do so can lead to much heartbreak later, as well as to substantial legal costs and potential financial loss.

All clients have different circumstances. Accordingly, the law can be quite flexible. It will allow purchasers to decide how the property in question is to be held, who will own it and what will happen to it if the relationship should end. Problems usually arise where the purchasers fail to make a decision when the property is purchased or fails to record adequately what they have decided.

Held and Owned

Most homes in England and Wales are registered. This means that details of the property and the person(s) holding it are recorded on a statutory Land Register. This Register is open to the public. The person(s) holding the property may be (and usually will be) the true owner(s). However, they need not be. Sometimes people wish to conceal the identity of the true owner(s) of property and the law allows them to do so. It will be for the couple to decide who they want to hold the property and who will be the true owner(s).

Single or Joint

1. A property can be held in a single name or it can be held in joint names.
2. A property can be owned by a single person or it can be owned by two (or more) people jointly.
3. Where two or more people own a property jointly, they may each have equal shares or they may have unequal shares. It is for them to decide.

Survivorship and Inheritance

Where two people or more own a property jointly, they may agree that when one dies, the survivor should automatically become owner of his share. This is known as a right of

survivorship and it operates independently of any Will that the deceased person may have made. Alternatively, they may agree that when one dies, his share should be inherited by the persons he has named in his Will. It is for the couple to decide which of these alternatives they want.

Where a couple are married or in a civil partnership, if one dies having failed to make a Will, then there are statutory rules governing the inheritance of their property. These rules benefit the surviving spouse or partner and children and other relatives. However, where a couple are not married nor in a civil partnership and one dies having failed to make a Will, then although the same statutory rules operate, these rules do not recognise a 'cohabitee' as a spouse or civil partner. In fact, these rules do not recognise a cohabitee at all. Accordingly, a surviving cohabitee could face losing not just their partner but also their home. For this reason, it is desirable that cohabitees make provision for what they wish to happen on the death of one of them.

Mortgages

Most properties are bought with the assistance of a loan made by a bank, which then takes a mortgage over the property as security for its debt. Mortgages are usually repayable by regular instalments and banks usually require borrowers to show that they have sufficient earnings to be able to afford the repayments. A mortgage loan may be made to purchasers jointly. They will then both have a legal obligation to repay it. Or the mortgage loan may be made to just one party and only he/she will have a legal obligation to repay it. However, in either case, both may be earning money that they pool and use to repay it. Or both may be earning money but only one may repay it, the other one paying other household bills. Or only one may be earning money and repay it and the other may run the household and look after children. In these and related situations, a decision should be taken whether the money loaned by the bank is to be treated as provided and repaid equally by the couple, or wholly by one party or in some other proportion.

Sometimes purchasers assume that because one party has the income that the bank has relied on in order to grant the mortgage loan, that same person must either hold or own the property. That is not generally true. What is generally true is that the bank will require the person with this income to enter into the mortgage agreement, whether or not he also holds or owns the property.

Purpose

Most properties are bought for a purpose. Typically this would be to provide a joint home for the couple or for commercial purposes.

The question then arises, what is to happen to this property when the purpose has come to an end, for example because the couple have split up or one has died or a commercial relationship has come to an end? Should the property immediately be sold and the proceeds divided between them? Or should one party be allowed to continue living in the property for a time – for example until children have grown up or until that party's own death? The law allows the couple to decide what they want to happen.

Writing

Arrangements involving land generally take effect only if written down and signed. The best time to make these arrangements is when the property is being bought. Then the solicitor acting on the purchase can draft the relevant documents and place them with the ownership documents. The consent of a mortgage lender may also be required.

A word of caution. In the event of a relationship breakdown or where negotiations take place with regard to the sale of the property or one party buying out the other it is important to take independent legal advice before doing or agreeing to anything. Exchanges of emails between parties have in recent time been sufficient to be legally binding agreements relating to the property meaning parties who perhaps did not appreciate what they were doing creating legally enforceable agreements. The consent of a mortgage lender may also be required.

Types of ownership

Joint Ownership Information When buying a property jointly it is very important that the respective contributions of the parties are reflected in the legal documents. Jointly owned property can be owned in one of two ways: as 'joint tenants' or as 'tenants in common'.

1. Joint Tenants

Most joint purchasers who are married or in a long-term relationship purchase as joint tenants. This means that when the first of you dies, the deceased person's share automatically passes to the survivor, irrespective of any will or the rules of intestacy. Joint tenants cannot leave their share in the property to anyone else. Joint tenants are entitled equally to the proceeds of any sale unless otherwise agreed. **A joint tenancy may be severed by either party at any time which converts the title to a tenancy in common in equal shares. This is done when one of the parties serves notice on the other to sever the tenancy. Neither party can prevent this should a relationship breakdown, it is therefore important you consider this.** If you buy your property as joint tenants it is still very important that

you both make a will so that you can determine what happens to the property when both of you have died.

2. Tenants in Common

Most business partners or unrelated joint purchasers purchase as tenants in common. The share of a tenant in common is separate property and will not automatically pass to the survivor when the first of you dies. You can therefore give your share to anyone in your will, and if you do not have a will your share will pass according to the rules of intestacy. When buying property as tenants in common a deed of trust or tenants in common agreement is often entered into to agree the relative rights of each owner. If you buy your property as tenants in common, whether in equal or unequal shares, it is very important that you both make a will so that you can determine what happens to your share of the property when you die.