



## **GUIDE TO JOINT OWNERSHIP**

You are planning to buy a property together. This means that you have to make an important decision about your shares in the property.

This guide explains the two ways in which property can be held by joint owners. You might have contributed different amounts of money to the purchase and if so, you might want to own the property in shares in the same proportion as your contribution. If not the shares may be held 50:50.

It is important that you consider this as soon as possible and let us know what you decide before you become committed to buying the property on exchange of contracts.

What you agree now may well decide what happens to the property and the division of the money when the property is sold; if one of you dies, or if either of you want to sell the property because you separate. If you are married (or in a civil partnership) and your relationship breaks down, then the family law courts have power to decide what should happen to the property and might over-rule any decision you make now. There could also be important tax consequences to think about.

No-one wants to think about such things at this time. However no-one can predict what the future holds. If you do not make a clear decision now it could easily cost thousands in legal fees and take years to resolve the issue if the courts have to decide how the property should be split. Thinking about this now can prevent unpleasantness and save money should things ever change in the future.

### ***“Joint Tenants” or “Tenants in Common”?***

You can own property jointly as “Joint Tenants” or “Tenants in Common”. The legal terms do not have anything to do with leases or tenancy agreements they are just the legal terms for the two ways you can jointly hold property with someone else.

### ***“Joint Owners”***

If you own property jointly with another person as Joint Owners it means that you each have equal shares in the property. It doesn't matter how much money you each put into the purchase of the property, whether you put in equal or un-equal amount, the result will be 50:50 or equal shares.

If one of you dies, then that person's share of the property automatically goes to the other owner; regardless of what it might say in the deceased's Will about the property.

The property will not even form part of the deceased's estate for Inheritance Tax purposes. Also, any bequests of their share in the property will have no effect. So, when the remaining owner dies, all the value of the property will go as directed in the Will of the surviving owner (or to their family if

they have not left a Will) and none of it will necessarily go to the family of the first owner to die. (Interesting fact – if you both die at the same time, the property vests in the youngest)

### ***“Tenants in Common”***

With joint ownership as “Tenant in Common” you can set your shares at 70%/30% or 50%/50% or any other proportion. The shares might represent how much you each put in to the house purchase. You can even agree at the outset that the proportions of each share can change as times goes by if, for example, one of you carried out improvements or pays off some of the mortgage of the property. You might want to allow one person to buy out the other persons share in the property, at a price agreed between you or addressed by a valuer.

You also have to think about what will happen if one of you dies. If that happens, then the deceased’s share will not go automatically to the other owner of the property but will go to whoever they left their share to in their Will. If they haven’t made a Will then their share will be dealt with under the law of intestacy, under which their share might go to the deceased’s spouse or children, or other family members.

You can, of course, still each leave your shares in the property to the other joint owner if you want to, but matters will often be more complex where you each have children or other relatives that you want to leave your respective shares to. You might also want to ensure that the property cannot be sold until the other owner dies or wants to sell it. All of these points can be dealt with in a “Declaration of Trust”, prepared separately.

### ***“Converting “Joint Ownership” to “Tenants in Common”- the “Notice of Severance”***

You can change from being “Joint Owners” to “Tenants in Common” by “Severing the Joint Ownership”. This is a legal phrase that refers to what happens when you give the other owner of the property a written notice saying that you “Sever the Joint Tenancy”. From the moment you serve the notice, the property will be held by you as Tenants in Common. The shares are held generally in equal shares, regardless of how much you each contributed to the purchase of the property.

You do not need the agreement of the other owner to “Sever the Joint Tenancy” of the property. Normally, all you need to do is give them the Notice of Severance. In some cases, even if they do not receive the Notice of Severance. For example if the notice is properly sent by post to their address but they don’t receive it the Joint Tenancy will still be severed and converted to Tenants in Common. Bankruptcy and various other situations will also automatically sever the joint ownership.

If you want to sever the joint tenancy you should get legal advice to make sure that the Notice of Severance is dealt with properly and noted at the Land Registry. If you are served with a Notice of Severance by the other co-owner of the property you need to seek legal advice immediately on its effect, in case it is necessary to take action to protect your share of the property. This is going to be particularly important if you don’t agree that the share should then be held equally (50:50)

### ***Other things to think about***

You might want to think about what happens if, for example:

- One of you wants to sell the house- can they force a sale?
- Does one of you have the right to buy out the others share and how will this work in practice?
- Who can live at the house, can your co-owner invite friends to stay?
- What happens if one of you leaves the property? Does the remaining owner have to pay any rent to the owner who left?
- Who is responsible for paying for repairs, maintenance and insurance, or the mortgage payments, fuel bills, or other outgoings- are they paid 50:50 or are they paid in proportion to your shares in the property?
- Negative Equity. If, for any reason, the property has to be sold for less than the amount outstanding on the mortgage, then the bank can pursue either or both of you for the full amount of any shortfall. You are each liable for the whole of the debt to the bank. If the bank chose to pursue just one of you for all the debt, then that person would have to claim a share off the other owner. If this happens, do you agree that the debts relating to the house should be shared in the same proportion as your ownership of the property?
- Life Insurance. You might also both need to think about taking out life insurance to pay off any outstanding mortgage should one of you die.
- Wills and Tax. You should consider making Wills and also the impact of Inheritance Tax.

### ***How to choose which option is right for you***

Everyone's situation is different and we will have to discuss your circumstances with you carefully before you make a decision but the following pointers may be helpful:

#### **Joint Tenants**

Choose this option if you are happy that:

- You have equal shares in the property.
- Your share **will** go to the other owner automatically if you die and that if you die first, then your share will not go to your children or other members of your family in accordance with your Will.
- You accept that the other owner can convert the Joint Ownership of the property to Tenants in Common at any time and that you will then own the property in equal shares or such other proportions as you agree at that time (or as the court may decide if you fail to agree on this point).

#### **Tenants in Common**

Choose this option if you are both happy that:

- You have unequal shares in the property.
- Your shares **will not** automatically go to the other owner if you die. The other owner may leave their share to you in their will, but they can change this at any time.
- You want your share to go to other members of your family or friends in accordance with your Will.

- You want to provide for any of the possible issues mentioned in this guide in a separate Declaration of Trust document that we can prepare for you.

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## **Talk to us!**

**Please ask us to explain anything in this guide or discuss any unusual circumstances. We can then advise on what is best for you.**

**This is a general guide only, and each situation may be different and may need specific advice.**