

A guide to Joint Ownership of your property

When two people are intending to own a property together, they must decide which kind of joint legal ownership they need.

There are two legal ways of owning property jointly and the difference is important. It affects what will happen if the property is sold or if one of you dies during your ownership of the property.

Property can be held on trust for joint buyers as either:

Joint Tenants

You would both hold identical legal interests in the whole of the property. On the death of either party the property will automatically pass to the survivor. This happens whether a Will is made or not and there is no need for any other formality. Neither co-owner can leave his or her share in the property by Will to somebody else and whoever survives can deal with the property in whatever way he or she chooses. People buying a property in this way should make Wills in order to determine what would happen to the property in the event of the death of both of them.

Tenants in Common

When people purchase as tenants in common they take separate shares in the property. These shares could be 50 % each or in unequal proportions to reflect their contribution to the purchase price. Then, if the property is sold, the sale money would be shared between you in the proportions you now agree. Upon the death of one of them the survivor would retain his or her own share in the property whilst the other share would pass under the Will of the one who died or in the event of there not being a Will the intestacy rules would apply.

If the survivor is not left the deceased's share under the Will, he or she will not be the owner of the whole property. Again, if you wish to hold the property in this way you can see that it is vital that you also make a Will.

If you wish to hold the property other than in equal shares you will need a Declaration of Trust to record your shares in the property.

Below are some examples where it would be advisable to be tenants in common: -

Scenario 1 - equal shares, friends

John and James are friends and decide to buy a flat together. They both contribute an equal deposit towards the purchase of the property. James wishes to leave his share in the property to his sister Jane when he dies. They therefore need to be tenants in common in equal shares and James will need to state that he leaves his share of the property to his sister.

Scenario 2 - unequal shares, couple not married

David and Laura are living together in Laura's property. They have decided to sell Laura's house and buy a property together. Laura will be contributing a deposit of £100k towards the purchase of the new property which is the equity from her current house. David will not be contributing towards the deposit but will be paying equally towards the mortgage. Laura would like to protect her deposit. Laura and David should therefore be tenants in common in unequal shares with a Declaration of Trust setting out their respective shares in the property, therefore protecting Laura's deposit.

Scenario 3 - equal shares, previously married

Charles and Joan have both been married before and have children from their previous relationships. They are now buying a property together. They have both contributed equally over the years to the family finances but they want to ensure that if something happens to either of them the other can still remain at the property but also that their children ultimately inherit their respective shares in the property. Charles and Joan should therefore be tenants in common in equal shares.

They would then need to ensure that their wills provide for each other to remain in the property for as long as they wish or until they remarry for instance and that their individual shares in the property are left to their children.

Future

The decision you make now can be changed in the future. A joint tenancy can be made into a tenancy in common by either party without the consent of the other. Tenants in common can also agree to have a joint tenancy in the future.

What Next

For further information please contact **Sara Hull** on **01376 321311**.