

Alison Fielden & Co.

Solicitors & Notary Public

FACTSHEET

Buying a Property in Joint Names

There are two main ways in which a property can be bought in joint names: -

- 1. Joint Tenancy** – the Co-owners own the property on behalf of beneficiaries who may be themselves as **Beneficial Joint Tenants** i.e. all Joint Tenants are jointly entitled to the whole of the property. On an individual basis each one has a potential share equal in size to that of the other Joint Tenants and the size of the share depends on the number of Joint Tenants. Thus if there are two Joint Tenants, each will have a potential half share. This means that if one Joint Tenant dies his or her share passes automatically to any remaining Co-owners by survivorship and may **not** form part of his or her Estate for Inheritance Tax or Probate purposes.

If Joint Tenants are a married couple and the marriage breaks down the share to which each is entitled is potentially one half. However, divorce courts **can** vary property entitlement according to the needs of the parties and any children.

If the Joint Tenants are an unmarried couple and the relationship breaks down the share to which each is entitled is again potentially one half but in this case application to vary property entitlements can be made to the court under Part 3 of the Civil Partnerships Act 2004.

- 2. Tenants in Common** – the Co-owners own the property on behalf of beneficiaries who may be themselves as **Beneficial Tenants in Common** i.e. each one is entitled to a separate share. The size of the share depends on what the parties have agreed. It may or may not be equal to the other shares. It must be specified when they acquire the property. If one Tenant in Common dies his or her share **does not** pass by survivorship to the others, but goes according to his or her Will or intestacy and forms part of his or her Estate for Inheritance Tax or Probate purposes.

If the Tenants in Common are a married couple and the marriage breaks down the share to which each is entitled is the share originally agreed and noted in the purchase Deed or separate Declaration of Trust made when they bought. Again, it should be noted that divorce courts **can** vary property entitlements according to the needs of the parties and any children.

If the Tenants in Common are an unmarried couple and the relationship breaks down the share to which each is entitled is the share originally agreed and noted in the purchase Deed or separate Declaration of Trust made when they bought. In this case the divorce courts have **no** jurisdiction and property entitlements cannot be varied according to need in the same way.

Changing from Joint Tenants to Tenants in Common

It is possible to change the method of ownership from Joint Tenants to Tenants in Common by means of a **Severance**, a simple document signed by the party wishing to sever. This document must be registered at the Land Registry.

Co-owners may choose to do this for Inheritance Tax benefits or on a relationship breakdown to ensure that survivorship does not operate and the property does not go to the estranged spouse or partner on death.

It is **not** possible to change from Tenants in Common to Joint Tenants except by a new Trust document in which all legal owners and beneficiaries join together with any mortgagee.

Buying the family home in the sole name of one party

- 1. Death** – in this case any person including husband, wife or co-habitee living in the property cannot expect to be entitled to the property on the death of the owner unless the owner makes a Will in their favour. If there is no Will the co-habitee will not benefit at all and a surviving spouse will only be entitled to a limited amount of the deceased's spouses Estate which may not be enough to enable him or her to remain in the house.
- 2. Relationship breakdown** – if the relationship breaks down the husband or wife (if the parties are married) **may** be able to protect his or her rights of occupation by registering them at the Land Registry. A co-habitee has **no** equivalent rights of occupation, as such. In some cases a co-habitee can establish an intention for the beneficial interest in the property to be shared. It may be necessary to apply to court for this. Relevant considerations will be e.g. who paid the deposit when the property was bought, who paid the legal costs, who has been paying the mortgage, who paid for any improvements to the property, etc. If there is no written agreement it must also be shown that the person claiming a share relied on the agreement that the property would be shared to his or her detriment. This area of law is complex and professional advice should be sought. Please also note that the Civil Partnerships Act which will be in force from 5 December 2005 will change the position.
- 3. Declaration of Trust** – it is possible for a sole owner to make a Declaration of Trust similar to the case of a Tenancy in Common specifying that he or she holds the beneficial interest on behalf of him or herself and another, to be registered at the Land Registry.

What to do when you buy

1. First decide if buying in joint names.
2. If so, is survivorship i.e. other Co-owner automatically entitled on death appropriate? Consider tax implications and risks of relationship breakdown. If survivorship should operate then opt for Joint Tenancy. Otherwise opt for Tenancy in Common and in this case ensure that the size of share is specified in the purchase Deed or separate Declaration of Trust.
3. If buying in the sole name of one party assess risk if owner dies or relationship breaks down and decide whether a Declaration of Trust is desirable and if so what share should be specified.

If in any doubt take advice from your solicitor well before completion of the purchase and preferably before exchange of contracts so that any necessary documents can be prepared and signed before you are committed.

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