

BUYING A PROPERTY IN JOINT NAMES

Introduction

When two or more people are buying a property together, a very important decision must be made by them as to the type of co-ownership they wish to put in place.

There are two ways in which a property can be owned by two or more people, and it is vital that you understand the differences before making your choice:-

Option 1 - Joint Ownership ('Joint Tenants')

Joint ownership means that each joint owner owns the whole of the property.

When one joint owner dies, his / her interest in the property effectively disappears. No part of the property can be transferred to anyone else under the deceased joint owner's will (no matter what it says) nor under the intestacy rules (if no will exists). The surviving joint owner is left automatically owning the whole of the property.

In the event of a sale during the joint owners' lifetimes, the general rule is that they will be entitled to equal shares of the net sale proceeds, even if one has made a greater contribution. Note however that exceptions to this general 'equal interests' rule can and do arise in divorce proceedings and can also be imposed by the court on the contentious separation of long-term partners.

The legal term for joint ownership is that the property is held as 'Joint Tenants'. Many married couples and some long-term partners hold property in this way. However whilst it may appear straightforward and convenient, it will not always be appropriate and this option should only be chosen after due consideration.

Option 2 - Ownership in Common ('Tenants in Common')

Ownership in common means that each joint owner owns a separate and distinct share of the property. They can agree to hold in equal or unequal shares. (For example, two owners in common could hold 50% each, or 70% and 30% etc.)

When one owner in common dies, his/her share in the property will pass to the person named in the will. If no will exists, it will pass to the next of kin under the intestacy rules. It is therefore very important that an owner in common makes a will.

In the event that the property is sold during the owners' lifetimes, the net sale proceeds will be split according to the owners' respective shares in the property.

The legal term for ownership in common is that the property is held as 'Tenants in Common'. Circumstances in which you should very seriously consider this option are where:-

- either co-owner has a child or children from a previous relationship
- the co-owners are an unmarried couple or have not entered into a civil partnership
- one co-owner does not wish the property on death to pass automatically to the surviving

co-owner

- co-owners make unequal contributions towards the purchase price and/or deposit
- co-owners will make unequal contributions to the mortgage payments and/or maintenance of the property
- business partners are buying together
- co-owners are considering how to reduce the potential inheritance tax payable on their estates

If ownership in common is chosen:-

- it is strongly recommended that the precise agreement between the co-owners is documented in a formal Declaration of Trust, to record the proportions in which the property will be held and to dictate how any proceeds of sale will be divided if the property is sold in the future;
- co-owners who are in a relationship may choose to enter into a Cohabitation Agreement, a more comprehensive document to deal with the way in which property is to be held, as well as to cover day-to-day matters such as household outgoings, repairs or improvements to the property. This document could also govern the arrangements should the relationship break down. If you intend to 'tie the knot' soon and would like to protect your own assets and financial contributions in a similar way, a Prenuptial / Pre Civil-Partnership Agreement may be appropriate. Although not automatically binding on the courts, these agreements are usually followed by the court, providing certain criteria are met;
- it is vital that each co-owner makes a Will setting out what is to happen to their share in the property on their death
- it is also recommended that a restriction be entered on the title to the property at the Land Registry to protect the value of any deceased's co-owner's share in the property on their death

If you would like further advice on taking these important steps and the preparation of the additional documentation, please contact us so that this can be arranged.

Mortgages

No matter which type of joint ownership is chosen, each and every co-owner will be liable to the mortgage lender for the full amount of money owed on the mortgage.

Converting from Joint Ownership to Ownership in Common

It is possible to convert joint ownership into ownership in common at any time by one co-owner giving notice to the other and to the Land Registry. The general rule when this conversion takes place is that the property is owned in equal shares (or in unequal shares only if all co-owners agree). However it is also important to note that in disputes between co-owners the court can make an order stating that the co-owners are entitled to unequal shares. In these circumstances the court will specify what those shares are to be.

Separate Advice

If you cannot immediately agree on how to proceed, we strongly advise that you should each seek advice from separate solicitors on what is the best way to proceed in your circumstances. Please contact us if you wish to discuss how to arrange this.