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Joint Ownership

A guide to Joint Ownership



What is joint ownership?

Joint ownership is where two or more people own a property together. It is also known as co-ownership.

As joint owners, you can hold the property in one of two ways:

- As joint tenants.
- As tenants in common.

Joint tenants

If you hold the property as joint tenants, both of you will own the whole of the property. You will not have a specified share in the property and will not be able to leave a share of the property in your will.

If you sell the property, or if you separate, it will be presumed that you both own the property equally, regardless of your respective contributions to the purchase price. On the death of one joint owner, their interest in the property would automatically pass to the remaining joint owner without any further action. This is known as the "right of survivorship".

The surviving joint owner would then own all of the property and on their death it would form part of their estate. Married couples or those in a civil partnership commonly use this method of co-ownership because the right of survivorship makes it straightforward to inherit each other's shares in the property.

However, there may be reasons not to hold a property as joint tenants. For example, if one of you has made a larger

contribution to the purchase price of the property and you would want this to be recognised if the property is sold or if you separate. A joint tenancy is also not suitable if you have a family from an earlier marriage and wish to leave your interest in the property to them, instead of passing it to the other joint owner.

Tenants in common

If you hold the property as tenants in common, each of you will own a specified share in the property. You need to consider whether each person's share will be fixed from the outset or whether the shares will vary according to the financial contributions made by each person during your ownership of the property.

If you opt for fixed shares, your shares may be equal, but they do not have to be. Holding the property as tenants in common in unequal shares may be desirable if you have made unequal contributions to the purchase price of the property.

If your shares are fixed, you will need to decide the size of those shares now. You may therefore need to revisit the split if there is a change of circumstances in the future which you want to reflect in the proportions in which you own the property. An example would be if only one of the joint owners pays the costs of significant improvements to the property.

If your financial contributions towards the property throughout your ownership are unequal (for example, if one person pays a larger proportion of the mortgage repayments or the costs of any major works to the property), you may want your shares to reflect this.

This means that your respective shares in the property may vary from time to time depending on who pays what. The calculations will be more complex and you will need to keep accurate records of each person's contributions. If you hold as tenants in common, your share of the property can be passed on to another person, either during your lifetime or under your will. If you do not have a will at the time of your death, then your share will pass in accordance with the rules of intestacy.

Holding the property as tenants in common may be appropriate if you have children from previous relationships and would prefer them to inherit your interest on your death rather than your co-owner.

If you wish to hold the property as tenants in common, then you should sign a declaration of trust. A declaration of trust is a document that formally records that you hold the property as tenants in common and sets out your respective shares in the property. If you sell the property, or if you separate, the declaration of trust will be referred to, to work out your entitlement to the sale proceeds from the property.

Deciding on the method of ownership

How you wish to hold the property must be your own decision and it is something that you should keep under review following the purchase of your property.

If you decide to hold the property as joint tenants but then wish to split your interests, you can "sever" the joint tenancy and turn it into a tenancy in common at any time. It is also possible for tenants in common to become joint tenants at a later date by entering into a new declaration of trust.

You should be aware that if you decide to hold the property as joint tenants:

- Either party can sever the joint tenancy without the other's agreement.
- The joint tenancy may be severed automatically in several situations, including where one party becomes bankrupt.

It is important to specify now how you wish to hold the property, to avoid any uncertainty in the future. The consequences of failing to reach a decision and properly documenting that decision now, may include:

- The risk that a dispute may arise between you at a later date. This could result in litigation, which is often time consuming and costly for the parties involved.
- The possibility that a court may have to decide the shares in which you own the property. A court may divide the property in a way that differs from what you intended.