

JOINT OWNERSHIP OF PROPERTY

There are two types of co-ownership: **joint tenants** or **tenants in common**. A maximum of four people can be the legal owners of a property. Where there are more than four owners, the first four hold the legal interest (registered at the Land Registry) on a beneficial trust for all owners, details of which will need to be recorded in a separate Declaration of Trust.

1. JOINT TENANTS

The whole is owned by all co-owners. On the death of an individual co-owner, ownership remains with the surviving co-owner(s). This is irrespective of whether or not the deceased made a will unless they are the sole surviving co-owner. On the death of the last remaining co-owner, ownership of the property passes in accordance with that person's will or the rules of intestacy.

People holding a property as Joint Tenants should still make wills to indicate what will happen to the property should they all die.

On sale or in the event of a relationship breakdown, the usual position is that the proceeds will be payable to the co-owners in equal proportions regardless of their original contributions to the purchase price, payment of running costs or of improvements made during ownership. Whilst Courts may take such factors into account, this should not be relied upon. You should also bear in mind the significant time, expense, risk and uncertainty involved in court proceedings.

It is possible for one co-owner to unilaterally change a joint tenancy into a tenancy in common in equal shares by serving notice on their co-owners and making an application to the Land Registry (known as severance of a joint tenancy). The co-owners cannot prevent this and their consent is not required. Severance of a joint tenancy is sometimes done as part of Inheritance or other tax planning.

Joint purchasers, especially those who are not married or in civil partnerships and are making unequal contributions to the purchase price or who have dependents for whom they wish to provide in their wills such as children from a previous relationship are advised not to hold the property as Joint Tenants. Please see the adjacent section on Tenants in Common.

Legal rights can be claimed by persons who move in with you and/or contribute to the purchase price, improvements or running costs of the property. Before agreeing to such arrangements, you should seek specialist legal advice and consider having an agreement drawn up if you wish to protect your position.

The following provides a practical example of the difference between the two types of co-ownership.

2. TENANTS IN COMMON

Each co-owner has a specified interest in the property and in the event of death, their interest passes under the deceased owner's will or the rules of intestacy if there is no valid will. Ownership does not automatically pass to any surviving co-owner(s).

A tenancy in common will either be on the basis of ownership in equal shares or specified shares. For instance, two co-owners might choose to hold equally (on a 50/50 basis) or specify a 70/30 split of ownership. This information is not specifically referred to on the registers of title held by the Land Registry and should be recorded in a separate Declaration of Trust.

On sale or in the event of a relationship breakdown, the proceeds will be payable to the co-owners in the specified proportions regardless of their actual contributions to the purchase price, payment of running costs or of improvements made during ownership. Whilst Courts may take such factors into account, this should not be relied upon. You should also bear in mind the significant time, expense, risk and uncertainty involved in court proceedings.

Specified unequal proportions may be appropriate where joint purchasers have not contributed equally to the purchase price and want to ensure this is reflected in the event of relationship breakdown or future sale of the property.

A tenancy in common may also be appropriate for inheritance or other tax planning purposes and/or where there is a need for the interest in the property to pass under a deceased owner's will rather than automatically to a surviving co-owner. This might be the case where provision needs to be made for children from a previous relationship or another dependent in which case it is essential each co-owner has a valid will to ensure that their share is transferred in accordance with their wishes.

It is possible to change a tenancy in common to a joint tenancy if all co-owners agree and enter into a Declaration of Trust.

Example of the difference in choosing Joint Tenants or Tenants in Common:

Sue and Richard are an unmarried couple who both have grown up children from previous marriages. They each have funds from the sale of previous properties and will be using these monies to purchase a new property together.

Sue is contributing £150,000 towards the purchase

Richard is contributing £300,000 towards the purchase

If they purchase as Joint Tenants: If Richard or Sue dies without having severed the joint tenancy, the surviving owner will automatically own the whole property. The deceased's grown-up children from their previous relationship will receive nothing.

If Richard and Sue separate, they will be presumed to have an equal interest in the property even though Richard has put significantly more money into the purchase. If Richard wishes to dispute this, and no agreement can be reached, he will have to go to Court.

If they purchase as Tenants in Common: Their individual interests in the property can be specified as to 1/3 to Sue and 2/3 to Richard to reflect their initial financial contributions.

If Richard or Sue dies, their interest in the property will pass in accordance with their Will or the rules of intestacy. That means they can each leave their specified interest in the property to their grown-up children or to anyone else they wish (including each other). They can change their Wills at any time should their wishes or circumstances change.

If Richard and Sue separate, their individual interest in the property has already been defined to reflect the fact that Richard has put significantly more money into the purchase.

Having considered the above please indicate your choice of joint ownership by completing the boxes in Section 3 of your Starter Form.