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FACTSHEETS: Owning Property Jointly

When two people are intending to own a property together they must decide which kind of legal joint ownership they require. The following explanation will help you to make this decision.

There are two kinds of joint ownership and the difference between them is important and affects what will happen if the property is sold or if one of you dies during your joint ownership of the property.

When you have decided which kind of joint ownership you prefer you will need to advise your solicitor as he will ask you to complete the appropriate documents to ensure that the property is held in the correct way.

The two ways of co-owning a property include the word 'tenant' which simply means 'owner', it has nothing to do with tenants who pay rent to a landlord.

JOINT TENANTS

As joint tenants you would both hold identical legal interest in the whole of the property. Both of you would have to sign a Transfer Deed before the property could be sold. The money from the sale of the property would go to both of you as one sum, or as you both request. If one of you dies, any bequest of the whole or any part of the property in the will of the person who has died would be totally invalid and ineffective. The property would pass automatically to the survivor who becomes the sole owner of the property without the need for any transfer document. If it was then sold the survivor would be entitled to receive all of the sale money.

TENANTS IN COMMON

As tenants in common you would both still be legal owners of the property and both of you would need to sign a Transfer Deed before the property could be sold. However, instead of you both owning all of the property the value of the property would be divided between you.

You can agree to hold the property in equal shares, even though one of you is (or will be) contributing more money than the other towards the purchase or running of the property.

Alternatively, if you will not be making equal financial contributions to the property you may decide how you will own the property in unequal shares. Then, if the property is sold the sale money would be shared between you in the proportions you now agree.



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If either of you died the share in the property of the person who has died would pass under the terms of that person's will or intestacy. If the property was sold the sale money would be divided between the surviving owner and the estate of the deceased joint owner in the appropriate shares.

Points To Consider

Married couples usually own as joint tenants. If the purchasers are not married they own as tenants in common – either in equal shares or in the proportions they agree (which usually correspond to their contributions to the purchase price). If you decide to hold as tenants in common you should consider having a separate Trust Deed prepared to specify both parties' financial responsibilities and interests in the property. If one or both of you were to die while you were a tenant in common your share in the property would form part of your estate – it would not automatically pass to your joint owner. Therefore to pass on a share, if you decide to be a tenant in common, you should consider making a will now or reviewing your existing will.

Please also note that certain wills of married couples are drawn in a particular way using different forms of trusts in order to minimise the potential liability to pay inheritance tax on death. Some of these trusts can only operate effectively where each spouse can leave a separate share in the property by his or her will, i.e. the property must be held as Tenants in Common, since property held in a Joint Tenancy would bypass the will altogether. Thus you may wish to consider the possibility of preparing tax saving wills at the same time as making the decision whether to hold the property as Joint Tenants or as Tenants in Common. Please contact your solicitor to discuss these issues in more detail.



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