

RESIDENTIAL PROPERTY- JOINT OWNERSHIP

When property is owned by more than one person, they are able to own the property either as joint tenants or as tenants in common. It is important that you understand the differences and give us clear instructions as to how you wish to own your new property.

- **Joint tenants** are usually two people (often husband and wife) who own property together. If you own property as joint tenants you are each taken to own an equal share in the property, and if one joint tenant dies then the surviving joint tenant will automatically become the owner of the whole property without any further legal process or documentation.
- If joint owners own property as **tenants in common** then each owner is taken to own a specific share in the property, and on the death of any joint owner that specific share will pass in accordance with the terms of the Will of that joint owner, or if there is no Will then it will pass in accordance with the laws of intestacy. Any number of joint owners can hold property as tenants in common, and unless there is a declaration or deed to the contrary, each joint owner as tenant in common will be taken to own an equal share in the property. It is important to record by documentation any unequal shares in property. Please would you contact us to discuss this further. The appropriate document in these circumstances is a Declaration of Trust under which you record the shares by way of percentage or figures, whichever is preferable or more appropriate to the circumstances, of the ownership you each have in the property. You can include in this deed other important matters such as who is to pay the mortgage and in what share, and indemnity for any person not paying the mortgage, and a mechanism by which the property can be sold in the future, or one party can buy the other party out. It is important to make sure that the Declaration of Trust accords with your Wills, and hence the need for us to discuss this further.

The important difference to note between joint tenants and tenants in common is what happens to the respective share of any joint owner on the death of that joint owner:-

As joint tenant the share will pass automatically to the surviving joint owner, but as tenant in common the share will pass under the terms of any Will or intestacy. Generally speaking, therefore, for a husband and wife who are purchasing together it is quite acceptable to hold the property as joint tenants, since on death the survivor will become the sole owner.

However, for people who are not married or are not happy with such consequences on death, it is best to consider holding the property as tenants in common so that on death any share in the property passes in accordance with your wishes expressed in your Will. This may or may not be to one or more of any surviving joint owners, but it is important that you have control over your share upon death.

Obviously it is also important to consider whether or not there is any Will in existence, or the advisability of making one to ensure that your wishes are carried out on death. There can also be positive advantages in a husband and wife making Wills leaving their respective interest in the property to the survivor and then arranging to hold the property as tenants in common. This can lead to inheritance tax savings should both husband and wife die together or within a short period.

We will be pleased to provide further information on this.