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When property is owned by more than one person it is held by them "in trust". The property is treated as being held by the owners temporarily (whilst they use and enjoy it for whatever purposes they agree) and on the basis that they will ultimately sell it and share the proceeds between them. Since 1996 all such trusts have been known as "Trusts of Land" and the courts have unrestricted powers to resolve any disputes relating to such trusts. Nevertheless, in specific cases it will still be appropriate to give joint owners a power to force a sale of the land e.g. when they are in business together.

Joint tenants and tenants in common

Persons who own property jointly can choose whether to own it as "joint tenants" or "tenants in common".

Joint tenants – do not own separate shares in a jointly owned property. Consequently, on the death of one joint tenant, the whole property automatically belongs to the remaining joint tenant(s) and the last surviving joint tenant becomes the sole owner. A joint tenant therefore has no share in the property to gift by Will. This form of joint ownership is used routinely by married couples or civil partners because of its informality on the first death. However, such people

may need to consider whether this is the most appropriate form of ownership for their particular circumstances. When a property owned by joint tenants is sold, each owner receives an equal share of the sale price (regardless of contributions made to the purchase price or to mortgage payments).

Tenants in common – do own separate shares in a jointly owned property. Consequently, on the death of one tenant in common, the share of that tenant in common passes to the person(s) entitled to it under the terms of his or her Will or, if they have no Will, under the rules which apply on an intestacy. It may be important to take into account the requirements of the surviving tenant(s) in common and it is therefore vital that tenants in common have Wills which specify what happens to their shares in jointly owned property when they die.



Because tenants in common have separate shares, it is possible to specify what proportion of the sale proceeds they receive when the property is ultimately sold. This is usually done in a separate Trust Deed which can contain other relevant terms e.g. liability to repay mortgages and the ability to force a sale of the property.

Choosing whether to own as joint tenants or tenants in common

Owning as joint tenants clearly has the advantage of simplicity. However, the number of circumstances in which joint owners should consider owning as tenants in common is increasing.

These are some of the most common:

- Separate shares in a property require protection – joint owners who have contributed different amounts to the purchase price of a property may wish to ensure that they each receive their appropriate share of the proceeds of sale e.g. cohabitating couples, friends, relatives or business partners who buy a property together.
- Spouses may not wish each other to become the owner of the whole property following the first death for a number of reasons:
 - They may be concerned by the prospect of the survivor remarrying and diverting assets away from the children of the marriage.

A spouse with children from a previous marriage may ultimately wish those children (rather than the surviving spouse) to receive his/her share in the property.

- An elderly married couple may each want their share in the property to pass to their children on the first death rather than automatically to the survivor of them.

Depending on the circumstances surrounding such a gift, there may be tax or other consequences which are not the subject of this guide, but on which further advice will be required.

Severing a joint tenancy

Joint owners who own property as joint tenants may “sever the joint tenancy” (so that the property is subsequently owned by them as tenants in common) simply by serving a notice on each other to that effect. If you think this may be necessary, please contact us.

Conclusion

Because in the majority of cases it is still appropriate for joint owners to own property as joint tenants, we shall assume that is what you want unless you instruct us otherwise. However, if you are not sure please arrange a meeting to discuss this matter further. If you know at this stage that you wish to own as tenants in common (in which case a Trust Deed may be necessary), please contact us so that we may take the necessary instructions to prepare an appropriate Trust Deed.

Talk to us...



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