

DEAN CONVEYANCING

Guide to Joint Ownership

If two or more persons are purchasing a property jointly, then they must decide whether to hold the property as **JOINT TENANTS** or **TENANTS IN COMMON**.

1. **JOINT TENANTS**

- This is the method of ownership commonly used by married couples who do not wish to distinguish what each of them owns or to demarcate their shares in the property.
- If a property is held by **JOINT TENANTS** and one of them dies, his or her interest will be transferred automatically to the survivor by operation of law, regardless of any contrary provision that might be contained in the deceased's will. In the case of a married couple who want everything to go to the survivor on the first death, this is perfectly in order. However, if they want to provide for any other arrangement in their Wills, a joint tenancy may be inappropriate.

2. **TENANTS IN COMMON**

- If a property is held as **TENANTS IN COMMON**, the interest of a deceased person does not pass automatically on death. His/her share will pass under the terms of his/her will or according to the rules applicable on intestacy in the absence of a will.
- In the event of any dispute arising as to the respective financial interests of **JOINT TENANTS** in a property (outside any proceedings brought under divorce legislation), a Court is unlikely to look beyond a joint tenancy declaration. It will presume that each owner has an equal share in the value of the property (less the sum outstanding on any mortgage) or the net proceeds of sale (after repayment of any mortgages and other associated sale costs).
- Under the divorce legislation, the Courts retain a wide power to make such property adjustments as they may think appropriate in the circumstances.

Therefore, if –

- the contributions to a purchase price are being provided by the Buyers in unequal shares or
- if on a subsequent sale, the parties would expect the proceeds of that sale to be distributed between them in unequal shares or
- if there are any reasons why one or more of the parties would not want the survivor to take a share of the property automatically or
- if a third party is making a contribution to the purchase price or towards, say, an improvement to the property,
- then normally one would expect a **TENANCY IN COMMON** should be selected and details provided as to the respective shares or other particular circumstances that the owners would wish to apply

3. **DECLARATION OF TRUST**

Where a tenancy in common is created and money is being provided in unequal shares, it is wise to enter into a separate declaration of Trust at the same time as completion of the purchase. At the very least, this document should record the shares in which the joint owners will hold the legal estate in the property. We can prepare this deed for you and would be pleased to discuss this further and give you an indication of the additional costs involved.

Although a Declaration of Trust is normally binding on the parties entering into it, there are occasions when the courts have power to disregard such documents and to order that the property should be divided in a different way. In particular when making financial orders upon break down of marriage the courts have a wide discretion to re-distribute assets between 2 spouses.

4. **TAX IMPLICATIONS**

You may wish to seek advice from your accountant as to the tax implications of co-ownership in respect of capital gains tax and when planning for inheritance tax.