



Land Ownership

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To ensure that your financial contributions towards the purchase/ownership of the property are fairly and accurately reflected in the Transfer it is most important that you read this document, understand it and then return it to us.

If you are unsure about anything YOU MUST WRITE TO US setting out your concerns so that we can advise you further. Please complete the form and return it to us so that we can proceed to prepare the necessary documents.

JOINT OWNERSHIP

If two or more people own a property they can do so in one of two ways, namely as "joint tenants" or as "tenants in common". These are complex legal terms and have very different consequences in the event of one party dying or on a subsequent sale of the property.

Joint Tenants

Most couples who are married or are in a stable relationship purchase as "joint tenants". The effect of this is that upon the death of any of the joint owners, that persons share will automatically pass to the surviving joint tenants. A joint tenant co-owner cannot therefore leave their share in the property by Will to somebody else and the survivor(s) can deal with the property in whatever way they choose. However people buying a property by this method should always make Wills in order to provide what will happen to the property in the event of a tragic incident such as a car crash where the joint tenants die at the same time.

Cohabitees as Joint Tenants

Prior to the Supreme Court case of *Kernott –v- Jones* (2011) another consequence of buying as joint tenants was that on a subsequent sale of the property and in the absence of a Declaration of Trust the proceeds of sale would be shared equally even where the joint tenants had contributed to the purchase price in unequal proportions. However, the Supreme Court has now put that in doubt and the following principles apply:

- (a) Where a family home is bought as joint tenants it is presumed the property is owned in equal shares.
- (b) However, on a sale this presumption can be displaced by evidence that there was a different common intention either when the property was purchased or at a later date.
- (c) That common intention is to be objectively deduced from the conduct and dealings between the parties.
- (d) Where it is clear, either that the parties had a different intention when they bought the property, or that their intention later changed, but it is impossible to say what the actual intention was as to the shares, then a Court is entitled to determine the parties' fair shares having regard to the whole course of dealings between them.
- (e) Every case will turn on its own facts. Financial contributions are only one relevant factor amongst many others.

It is therefore not certain, where you are unmarried, that the sale proceeds would be shared equally. The last thing on people's minds when they embark on buying a property together is splitting up but it is highly recommended that you consider this scenario and protecting your interests, and we would suggest you read the rest of this form carefully.

We would particularly draw your attention to the following:

1. All cohabitees who purchase property together should strongly consider having a short trust deed drawn up establishing their rights and ownership to a property (particularly if contributing different amounts of deposit) to avoid later dispute.
2. Cohabitees should take legal advice from a family lawyer at the outset of living together and should consider drawing up an agreement establishing not only what should happen if they separate, or one party should die, but also what should happen financially during their time together. This is particularly relevant if living in a property which is owned by only one of the cohabitees.
3. It is important to understand that there is no concept of "common law spouse" or automatic entitlement after a period of cohabitation. Rights for cohabitants are very limited indeed and as we can see from the application of law by the courts, is very difficult to interpret or predict with certainty. If you want to be entitled to something of financial value, get advice and have it formally documented.
4. If monies are being received from a relative or third party (perhaps a parent) towards the deposit which may or may not become repayable at some future time, then that third party should also take legal advice to properly protect their interest. (This also applies to those providing funds to married purchasers of property)
5. If you separate as cohabitees you should take early legal advice from a family lawyer to establish your position vis a vis any property and take such action to protect that interest.

Example 1 John Smith and Mary Jones decide to live together. They purchase 1 Acacia Avenue for £200,000.00. John contributes £50,000.00 of his savings, Mary £25,000.00 from hers and the balance of £125,000.00 they take out on a mortgage. 3 years later they decide to separate and the house is sold this time for £225,000.00. The sale proceeds are divided as follows:-

Sale price		225,000.00
Less: Mortgage outstanding - say		<u>125,000.00</u>
Balance		<u>£100,000.00</u>
 John's share	£50,000.00	
Mary's share	£50,000.00	<u>£100,000.00</u>

Tenants in Common

This is the alternative way to own property. It means that each persons share is treated as being separate so that upon the death of any of the joint owners, his or her share will not automatically go to the other(s) but will go to those to whom it has been left in the deceased's owners Will, or if there is no Will, to whoever would be entitled under the Laws of Intestacy.

If you are contributing unequal amounts of money to the property or are business partners then it would not be unusual for the property to be held as "tenants in common". An appropriate clause will be included in the Transfer and this can be coupled with a Declaration of Trust to protect the agreed shares and provide a formula for calculating how the sale proceeds of the house should be divided on a subsequent sale or voluntary transfer.

Example 2 John Smith and Mary Jones decide to live together and purchase 1 Acacia Avenue for £225,000.00. John contributes £50,000.00 and Mary £25,000.00 and the balance of £125,000.00 is raised by mortgage. They decide to purchase as tenants in common and a Declaration of Trust Deed is prepared to reflect their agreement. They decide between them that in the event of a subsequent sale John will receive his £50,000.00 and Mary will receive her £25,000.00 and any balance of sale proceeds after deduction of the mortgage will be divided equally. They subsequently sell for £225,000.00, the effect is as follows:-

Sale price		225,000.00
Less:		
Mortgage outstanding-say	125,000.00	
Due to John as agreed	50,000.00	
Due to Mary as agreed	<u>25,000.00</u>	<u>200,000.00</u>

<i>Balance</i>		<u>£25,000.00</u>
<i>Divided equally: John</i>	£12,500.00	
<i>Mary</i>	<u>£12,500.00</u>	<u>£25,000.00</u>
<i>John's total: Original</i>	50,000.00	
<i>Divided share</i>	<u>12,500.00</u>	<u>£62,500.00</u>
<i>Mary's total: Original</i>	25,000.00	
<i>Divided share</i>	<u>12,500.00</u>	<u>£37,500.00</u>

When property is held as tenants in common and one party dies the survivor retains their own share in the property only. The share of the deceased owner passes to the appropriate beneficiary under their Will or if there is no Will the intestacy rules apply. This could mean that the survivor does not own the whole property. It is therefore essential that "tenants in common" make Wills in order to ensure their shares pass in accordance with their wishes.

Changing from Joint Tenants to Tenants in Common

It is possible to do this by having a 'notice of severance' document prepared and served on the co owner. This does not affect the value of the shares (which will remain as before) but has the effect of separating the shares so that on death a persons share would be left in accordance with their Will or the rules of intestacy.

It is also possible to convert from Tenants in Common to Joint Tenants.

Ways of Protecting Interests in Property

In addition to considering how you wish to hold the property, couples buying a property together need to consider, that it is a fact of life that many relationships break down, which can leave difficulties in resolving potential property and financial disputes.

Many people do not understand that the popular belief, "common law marriage", is a myth. Cohabitees who are unmarried and not subject to civil partnerships face very complex, antiquated laws, which are a mix of property and trust law. These can result in very expensive and lengthy legal battles. Financial rights do not increase as the length of the relationship grows. Furthermore, future changes to the law may not divide your assets and income in a way that you want. In addition, society is changing and many people are forming relationships later in life with assets acquired earlier and with children from previous relationships. All these can potentially provide a complicated mix in the event of a breakdown of a relationship. What can be done?

1. Co-Habitation Agreement/Living Together Agreement

This is a relatively straightforward legal document drawn up by solicitors which formalises arrangements. It can make it clear how properties are to be held and what would happen in the event that sadly the relationship breaks down. The cost is relatively small in comparison with the type of costs incurred in resolving a dispute in the future. Following the decision of the Supreme Court in *Kernott –v- Jones*, it is also important to review any co-habitation agreements, as a Court will retain the power to consider whether the parties' actual intentions, expressed intentions or inferred intentions have changed. Furthermore, subsequent events can change agreements, such as having a child.

2. Declaration of Trust

A Declaration of Trust records how a property is to be held. For example, you will note above that a property can be held as Joint Tenants, in which case the presumption is that the property is owned in equal shares unless there is any evidence to show otherwise. A Declaration of Trust would amount to such evidence. In addition, the property could be held as Tenants in Common in whatever shares a couple consider appropriate. Declarations of Trust are also very useful in circumstances where a third party is providing a substantial contribution to a property and all parties wish to record that to avoid future problems.

3. Pre-Marital Agreement/Post-Marital Agreement

In the event of marriage or civil partnership, the rules are very different and Courts retain a wide discretion to depart from any intention that was held at the time that a couple bought a property. For that reason, advice can also be given about a Pre-Nuptial/Pre-Marital Agreement in the event that a marriage is envisaged. Similarly, it is possible to enter into a Post-Marital Agreement once a marriage is in place to try to effect an agreement that determines how a property is to be shared upon the relationship breaking down. Following a recent Supreme Court decision, Courts have indicated that they can uphold appropriate and fair agreements. It is extremely important to take legal advice in this respect as it remains a complicated area.

Aberdeen

Blenheim Gate, Blenheim Place, Aberdeen, AB25 2DZ
T: 01224 011700 F: 01224 011701

Dundee

2 West Marketgait, Dundee DD1 1QN
T: 01382 202 208 F: 01382 202 208

Edinburgh

29 Rutland Square, Edinburgh EH1 2BW
T: 0131 516 5354 F: 0131 516 5378

East Lothian

33 Westgate, North Berwick EH39 4AG
T: 01620 893 481 F: 01620 894 442

Glasgow

160 West George Strret, Glasgow G2 2HG
T: 0141 530 2021 F: 0141 530 2035

Lincoln

Olympic House, 995 Doddington Rd, Lincoln, LN6 3SE
T: 01522 503500

gilsongray.co.uk

