



BUYING A PROPERTY IN JOINT NAMES

Introduction

If you are buying a property with another person, you must consider how you will hold the legal title. You may be buying as siblings, parents and children, married or unmarried couples, business partners, friends – the list is endless, but thought must be given to possible future contingencies. There are two ways in which a property can be owned in joint names:-

Joint Ownership

This is often also known as holding the property as “Joint Tenants”. In this case each co-owner owns all of the property. When one co-owner dies, his interest disappears and since the surviving co-owner already owns all of the property, nothing passes or is transferred under any will. Little more needs to be done other than to record the death. Whilst this may be simple and convenient, it may not always be appropriate and this option should only be chosen with care.

Ownership in Common

This is often also known as holding the property as “Tenants in Common”. This is where each co-owner has a separate and distinct share of the property. For example a 50-50 or 70-30 share. On the death of a co-owner under an ownership in common arrangement, his share will not pass automatically to the survivors but will pass according to the wishes expressed in the deceased’s will (or to the next of kin under intestacy rules if no will exists).

Examples of situations where we strongly recommend you consider Ownership in Common

- Where two or more people buy a property and make unequal contributions towards the purchase price and/or deposit.
- Where one co-owner would not wish his interest in the property to pass automatically to the survivor(s) upon his death.
- If you are buying with a business partner

- If you are an unmarried couple
- If either party has a child or children from a previous relationship. (You may wish to bequeath your interest in the property to your respective children).
- If you are trying to plan to reduce your potential Inheritance Tax liabilities.
- Where co-owners are going to be making unequal contributions to the repayment of the mortgage (if any) and/or to the maintenance of the property.

This is a much better way to hold property in all circumstances where joint ownership is not immediately and obviously appropriate. Our advice is that you should always choose ownership in common unless there is a positive reason to choose joint ownership.

For ownership in common it is sensible and sometimes necessary to document the precise agreement between the owners. This agreement is best recorded in a formal trust deed. You should consider:-

- The proportions in which the property is to be owned.
- If the shares in the property are to reflect financial contributions, how are these to be assessed – initial lump sums should be taken into account, but so too should mortgage payments and household bills.
- Responsibility for repair maintenance and insurance
- What will happen if there is a change in the contributions to the mortgage (if any) or other outgoings for a short period of time.
- Who can live in the house
- Who decides when the property is to be sold.
- A right for one party to buy the share of the other at current market value, how this right can be invoked and how the market value is to be decided.
- What will happen if the property falls into negative equity.
- What will happen in the event that one co-owner stops living in the property before it is sold.

This is not an exhaustive list, but examples of eventualities which should be considered and reflected in a written agreement.

Should you choose to buy the property as owners in common, then not only do we recommend that you formalise the agreement in a Trust document, but also that a restriction be registered at the Land Registry to preserve the value of the property for the benefit of your Estate. This registration will prevent the survivor of the owners appointing a new trustee which would allow the property to be sold without the knowledge or consent of the deceased's executors.

If you are going to buy a property to be held as ownership in common, then it is essential that you should set down what you wish to happen to your property upon your death and for this reason, we strongly recommend that you make a Will.

Please note that it is possible to convert from joint ownership to ownership in common at any time by one co-owner giving an appropriate notice to the other(s) and to the Land

Registry. It can also automatically change in other circumstances, e.g. the bankruptcy of one owner. When this conversion takes place then each owner will own a 50% share no matter what percentage of the purchase price they might have originally contributed.

Separate Advice

If you cannot immediately agree on the way you are to own the land, we would strongly advise that you should seek separate advice as to what is best in your circumstances. Please contact us if you wish to be advised by two separate members of the firm (at an extra cost) as to your options.

Trust Deed

If you would like any further advice on the preparation of a Trust Deed, the lodging of a restriction at the Land Registry, the drafting of a co-habitation agreement or the preparation of a Will, then please contact us and we will direct you to a solicitor within AWG who has specialist knowledge and who will be able to confirm with you the costs involved according to your own personal circumstances and requirements.

Mortgages

Please note that whatever form of co-ownership is chosen, both owners will be liable to the mortgage lender for the full amount of any money borrowed on a mortgage.

If you require any further assistance please do not hesitate to ask a member of staff who will be happy to help.

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