

Joint Tenants and Tenants in Common Explained

When we buy our home, one of the most important questions to consider is how legally we wish to own it. A property can be owned in a number of ways, sole ownership or jointly with others. In this guide we explain the types of joint ownership and some of the points to consider when making the decision.

Terms explained

Joint tenants (also known as beneficial joint tenants)

- Two or more people own the property
- The shares are equal
- The share automatically passes to the other owner(s) on death irrespective of what is stated in a Will
- A share of the property cannot be given to someone else

Tenants in common

- Two or more people own the property
- The shares do **not** have to be equal
- The share of the property does not automatically pass to the other owner(s) on death, but in accordance with wishes set out in a Will
- A share of the property can be given or sold to someone else during a person's lifetime

Changing ownership

It is possible to change the way a property is owned.

From sole ownership to joint ownership

If there is a mortgage on the property, then the Lender must be informed of change of ownership. The Title of the property will also need to be altered with the Land Registry.

From joint tenants to tenants in common

This is known as Severing the Tenancy. A document is drawn up by a solicitor on behalf of one owner and sent to the other owner(s). The other owner(s) do not have to agree. It is necessary for the Land Registry to be notified of the change of ownership.



From tenants in common to joint tenants

In this case, all the owners must agree. A document called a Trust Deed is prepared by a solicitor. Again, it is necessary to notify the Land Registry to ensure that the notice on the Title which states the ownership is tenants in common is removed.

How to check ownership

The title deeds will show how the property is owned. An up to date copy can be obtained from the Land Registry.

Sometimes, ownership can change without a person's knowledge for example, if one owner wishes to sever the tenancy or an owner goes bankrupt, so it is important to make sure that the copy of the title is the current version.

Reasons to think about ownership

Inheritance Tax Planning

Any gift passing between a husband and wife or civil partners on death is exempt from inheritance tax. This applies to ownership of a property, and therefore if the deceased's wishes are to pass the property to the surviving spouse, it makes little difference whether the couple own the property as joint tenants or tenants in common.

However, in some cases, because each person has an amount they can pass on, on death which is exempt from inheritance tax, it can be beneficial not to leave a share in the house to a spouse, but to someone else, for example a child. In this case, it would be necessary to own the property as tenants in common.

Divorce or separation

If a property is owned by a couple as joint tenants, then the home will automatically pass to the survivor on death. On separation and divorce, this is not always appropriate, so in this case, it is usual to sever the tenancy before or at the time of the divorce.

Protecting the Spouse or Partner

If a property is owned as joint tenants it automatically passes to the survivor on death. In some cases, this can be an advantage, as the surviving spouse or partner will have no worries about owning the home outright.

Protecting your contribution

If the owners have contributed to the purchase price in different proportions, to protect those contributions, the parties should own the property as tenants in common.

Remarriage

If a property is owned as tenants in common, on the first death, this share can be left in a Will to whomever that owner wishes. If it is left to children, then the surviving spouse and the children will own the shares in the property. In the event that the surviving owner remarries, the deceased's share will be protected as it will have already passed to the children.

Why use Linder Myers

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