

# CLIENT GUIDE TO JOINT OWNERSHIP

This guide is for people who are going to own property jointly with one or more person(s) for their own purposes.

**IT IS NOT** designed for people who are holding the property on behalf of a third party

***Please be aware that if you are MARRIED, in a CIVIL PARTNERSHIP, a LONG TERM RELATIONSHIP or the basis of your financial relationship with the other owners change the courts have wide ranging powers to vary the terms of any agreement you may enter into and you must bear this in mind when reading this guide***

This guide deals with the following questions:

Who will own the property and in what shares?

What will happen to the property if the relationship ends or on death?

What Tax Advice will I need

When making any decision on how the property is to be owned and on what basis, it needs to be made by all the parties involved. Any decision will (subject as mentioned above) be binding on all the parties throughout your ownership of the property unless you **ALL** decide to vary the terms of the agreement. Any variation will need to be in writing.

When you purchase a property, unless it is a business transaction, probably the last thing on your mind is who owns what share in that property? Unfortunately, relationships do break down, fatal accidents occur and bankruptcies do happen. For these and other reasons, it is essential when buying a property to discuss and record who is to own it. A failure to do so can lead to major disputes and heartbreak, as well as substantial legal costs.

Every transaction has different circumstances. Accordingly, the law can be quite flexible. It will allow you to decide how the property in question is to be held, who will own it and what will happen to it if the relationship should end. Problems usually arise where people fail to make a decision or fail to record adequately what they have decided prior to purchase.

## WHO WILL OWN THE PROPERTY

Where two or more people own a property, they may each own equal or unequal shares. This may be as a result of unequal contributions to the purchase price, mortgage payments or some other reason specific to the parties such as tax planning.

You will need to discuss the contributions that you are making to the purchase price both in terms of the initial deposit and ongoing payments such as mortgage maintenance

repair etc to decide on the shares in which the property is to be held. When making this decision you should also give consideration to any tax implications that could arise. Tax could be payable as a result of (but not limited to) any income you receive or capital gains you make from the property during your ownership or upon the death of any of the joint owners.

## **WHAT HAPPENS TO THE PROPERTY IF RELATIONSHIP ENDS ETC**

### **SURVIVORSHIP**

Where people own a property jointly, they may agree that when one dies, the survivor(s) should automatically become owner of their share. This is known as a joint tenancy and it operates independently of any will that the deceased person may have made. This has the benefit of the property passing automatically without the need to obtain probate. The downside is it can in the long term have tax implications.

Alternatively, you may agree that when one dies, your share should pass to the persons you have named in your will – this is known as a tenancy in common. Again when making this decision you should give consideration to any tax implications that could arise.

If someone dies having failed to make a will, then there are statutory rules governing the inheritance of his property. Where a couple are married or in a civil partnership these rules benefit the surviving spouse or civil partner and children and other relatives but probably not in the way you would expect (because of this we always recommend making a will). However, where people are neither married or in a formal civil partnership and one dies having failed to make a will, then although the same statutory rules operate, these rules do not recognise a “cohabitee” as a spouse or partner. In fact, these rules do not recognise a cohabitee at all. Accordingly, a surviving cohabitee could face losing not just their partner but also their home. For this reason, it is desirable that cohabitees as well as spouses or partners make provision for what they wish to happen on the death of one of them, by entering into a Trust Deed or making a Will, or both.

There are rules providing for a cohabitee in some circumstances to claim on the estate of a deceased partner but they can be complicated, longwinded and expensive to rely on.

### **PURPOSE**

Most properties are bought for a purpose such as to provide a joint home or as an investment property.

The question then arises, what is to happen to this property when the purpose has come to an end, for example because the couple have split up or one has died? Should the property immediately be sold and the proceeds divided between them? Or should one party be allowed to continue living in the property for a time – for example until children have grown up or until that party’s own death? The law allows the couple to decide what they want to happen.

You will also need to consider what you wish to happen in circumstances where one of you simply wishes to sell your interest in the property. You may wish to make provision that if one of you wants to sell they must offer to sell to the other and also agree the

terms for any sale. If the other party does not wish to or is unable to purchase you should consider if this means the property must be sold or not

## **TAX IMPLICATIONS**

Whilst we cannot give specific tax advice in this guide you would need to consider and discuss with your accountant any potential liability in three separate areas namely:-

(a) **INCOME TAX** - If you let the property at any stage any income you receive may be liable to income tax

(b) **CAPITAL GAINS TAX** – Unless the property is your principal private residence for the purposes of CGT you may have a liability to CGT for any profit you make when you dispose of the property even where the disposal is a gift

(c) **INHERITANCE TAX** - Where your share in the property forms part of your estate you may have an IHT liability.

As you will appreciate this is a very brief outline and you must take detailed advice on any potential liability

## **WRITING**

Arrangements involving land generally take effect only if written down and signed. The best time to make these arrangements is when the property is being bought.

It is generally possible to change these arrangements at a later date but such changes also have to be recorded in writing and signed in order to take effect. The consent of a mortgage lender may also be required.

## **CONCLUSION**

When considering joint ownership bear in mind the following points

1. shares in a joint tenancy are always equal regardless of actual contributions made
2. a joint tenancy can be converted into a tenancy in common by either owner serving on the other the requisite notice of severance but the shares remain equal
3. if there is a tenancy in common and the Trust Deed regulating ownership specifies where the share of one owner is to pass on his death that can only be changed during the lifetime of both owners by a supplemental deed signed by them both
4. if there is a tenancy in common and the Trust Deed states that on the death of one owner his share is to pass under the terms of his Will then he is free to change the recipient of his share at any time by making a new Will

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