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Co-ownership

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Your guide to Co-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. The guide is intended to help you make the best decision for you and your situation.

The guide provides details on the following questions:

- Who will hold the property?
- Who will own the property and in what shares?
- What will happen to the property if the relationship ends or on death?

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 (except in certain circumstances) 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, usually in the form of a deed.

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 and in what shares. 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.

Scenarios under which you need to be especially careful when considering co-ownership include (but are not limited to):

- Unmarried couples buying a home together
- Couples that have been married before and have children from previous relationships buying a home together
- Purchasers of investment property purchasing together
- Different generations purchasing together

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 going to make to the purchase price both in terms of the initial deposit and ongoing payments, such as any mortgage repayments, or any maintenance, repairs 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.

Most homes in England and Wales are registered. This means that details of the property and the person(s) holding it are recorded at the Land Registry. This register is open to the public. The person(s) holding the property may be (and usually will be) the true owner(s). However, they need not be. Sometimes people wish to conceal the identity of the true owner(s) of the property and the law allows them to do so. It will be for you as co-owners to decide who will hold the property and who will be the true owner(s).

Mortgages

Most properties are bought with the assistance of a loan which is secured by a mortgage over the property.

Mortgages are usually repayable by regular instalments and lenders usually require borrowers to show that they have sufficient earnings to be able to afford the repayments.

A mortgage loan will normally be made to all the purchasers jointly. They will then all have a legal obligation to repay it. Alternatively the mortgage loan may be made to just one party and only he/she will have a legal obligation to repay it. However, in either case, both may be earning money that they pool and use to repay it. Or both may be earning money but only one may repay it, the other one paying other household bills. Or only one may be earning money and repay it and the other may run the household and look after children. In these and related situations, a decision should be taken as to whether the money loaned is to be treated as provided and repaid equally by the couple, or wholly by one party or in some other proportion.

Sometimes a couple assumes that because one party has the income that the lender has relied on in order to grant the mortgage loan, that same person must either hold or own the property. That is not so. What is generally true is that the lender will require the person with this income to enter into the mortgage agreement, whether or not they hold or own the property with another party.

What happens if the relationship ends?

Survivorship

Where people own a property jointly, they may agree that when one dies, the survivor(s) should automatically become the owner of their share. This is known as holding as Joint Tenants 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 that it can in the long term have tax implications. It also means that if you sell the property, each party is entitled to an equal share in the proceeds of sale.

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 holding as Tenants 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/her 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 “co-owner” as a spouse or partner. In fact, these rules do not recognise a co-owner at all. Accordingly, a surviving co-owner could face losing not just their partner but also their home. For this reason, it is desirable that co-owners, as well as spouses or partners, make provision for what they wish to happen on the death of one of them, by entering into **Declaration of Trust** or by making a **Will**, or both.

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 the property 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 that 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 (CGT)** - Unless the property is your principal private residence for the purposes of CGT, you may have a liability to pay CGT for any profit you make when you dispose of the property, even where the disposal is a gift.
- (c) **Inheritance Tax (IHT)** - 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 their 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 their share is to pass under the terms of their Will, then they are free to change the recipient of their share at any time by making a new Will.

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 changes, 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.

Glossary

Tenants in Common - co-ownership where parties hold specified shares in the property

Declaration of Trust - a document detailing the tenancy in common

Joint Tenants - where all owners own all the legal interest jointly

Mortgage - a loan secured against the property to assist with the purchase

Will - a document governing your affairs and inheritance on death

Frequently Asked Questions:

Q “We are married – how should we own the property?”

A Most married couples or couples in a Civil Partnership elect to hold as Joint Tenants. This is because their spouse or civil partner will inherit by survivorship. If one party has contributed a greater amount however, they may consider a Tenancy in Common and a Declaration of Trust to avoid care home fees.

Q “I have children from a previous relationship – how can I protect my share in the property for them?”

A It would best for you to hold the property as Tenants in Common and prepare a declaration of trust governing your ownership and what should happen in the event of death or the relationship breaking down. You should also prepare a Will that reflects your wishes regarding the share in the property which may include a right for the survivor to remain in the property.

Q “I am paying more than my partner into the property but I want to hold the property as Joint Tenants?”

A You need to be comfortable that if you hold the property as Joint Tenants that you may only get back 50% in the property. If you are not comfortable with this you should hold as Tenants in Common in the respective shares you have put into the property.

Q “My boyfriend's parents are gifting him £10,000 towards the property and they want him protected?”

A A common scenario. Any mortgage lender is likely to want this reflected as a gift. As such, it is likely that a declaration of trust should be entered into by the co-owners reflecting the fact that the £10,000 (and any other contribution from your boyfriend) is “ring fenced” as would your contributions upon any breakdown in the relationship.

Q “I have adult children from a previous marriage. My new spouse and I are buying, and I would like them to be protected, as well as my children – what should I do?”

A We would suggest a Declaration of Trust that is drafted in conjunction with our private client team who would also draft your Wills. The two will need to work hand in hand, and you could, for example, grant your spouse a life interest in the property (so they can remain in the home for the rest of their life) and then on their death, the house is to be sold and proceeds divided between your respective estates. Your spouse could make a mirror Will that would do likewise.

Q “We cannot agree on how to hold the house?”

A The decision is one you must reach on your own. If you are in any doubt then either of you is free to seek your own advice but it cannot be from Pengillys. We act for all co-owners so can implement an agreement once reached but cannot advise on an individual basis.

Q “My mother is helping us pay for the house and we are going to convert an annexe for her to live with us?”

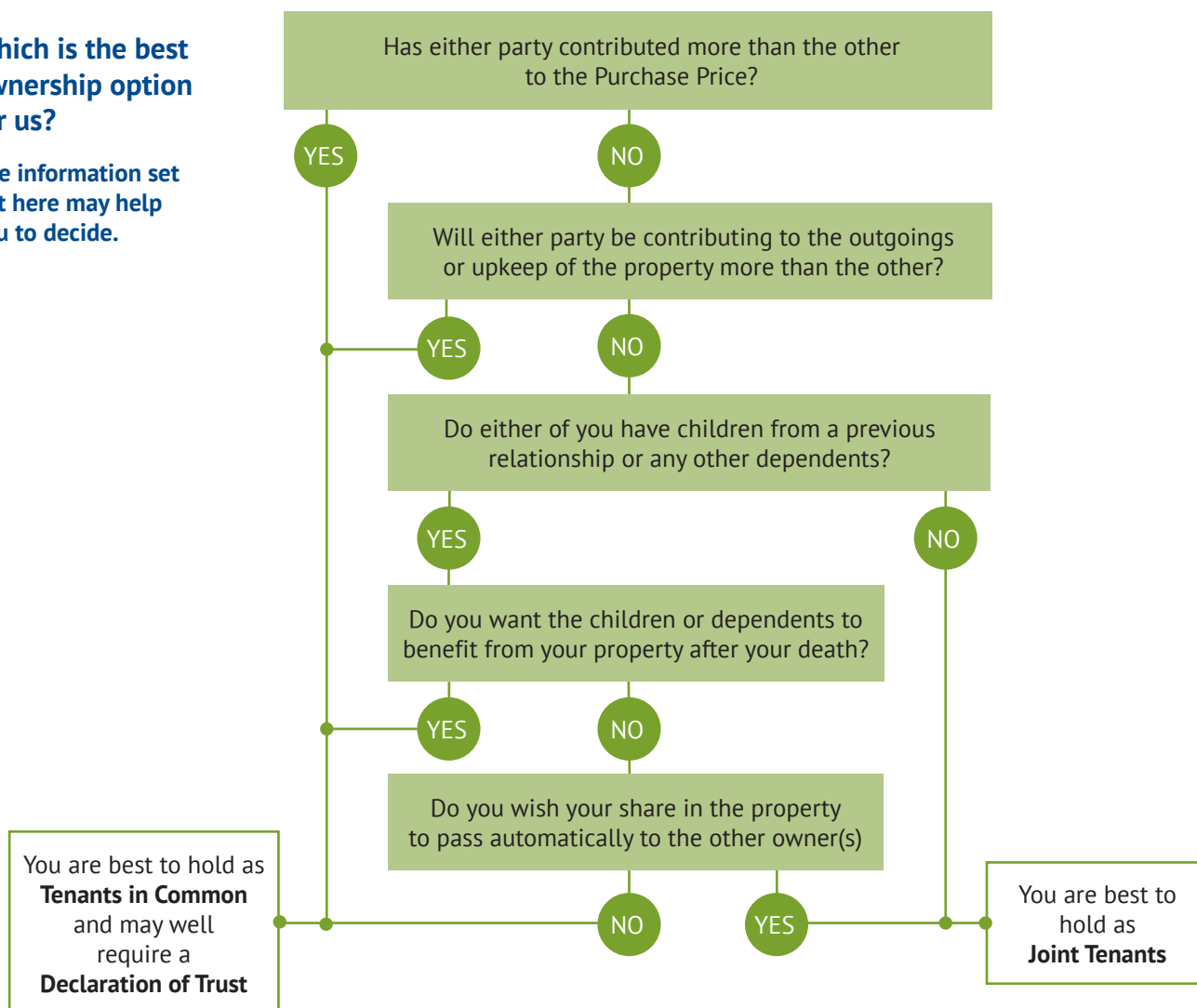
A We would strongly suggest a Declaration of Trust is drafted and that your mother seek her own independent advice upon the content of the same.

Q “Can we change our minds once we have bought?”

A Yes – and sometimes parties that have owned as Tenants in Common want to own as Joint Tenants when they get married. A supplemental deed can be signed reflecting this. Conversely if parties seek a divorce they will commonly sever a Joint Tenancy so that they hold as Tenants in Common.

Which is the best ownership option for us?

The information set out here may help you to decide.



We hope that this short guide has helped you in understanding more about what steps are involved when purchasing your home. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Property team.

Please visit www.pengillys.co.uk where full details of our Property team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

FRAUD WARNING

Please note we will **not** change our bank details throughout the course of the transaction. If you receive an email from us asking you to send monies to a different account to that noted in both the completions statement and this report please telephone us on 01305 768888 and ask for the accounts team.

Similarly, please do not email us bank details for payment of any proceeds of sale. If you do so, it is entirely at your own risk and we will endeavour to verify those details by telephone before making payment but accept no responsibility if monies are transferred to an incorrect account.

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We can also advise on:

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