

## JOINT TENANCY AND TENANTS IN COMMON

When two people are purchasing a property together they will need to decide whether to hold the property as Joint Tenants or as Tenants in Common.

Essentially to hold as **Joint Tenants** means that the joint owners together own the whole property and do not have a particular share in the property. This means that if one of the owners dies, the other will automatically become the sole owner. This would be the case regardless of whether or not a Will has been put in place to leave the deceased owner's "share" of the property to someone other than the co-owner.

It is sensible to hold a property as Joint Tenants if you are certain that you would not wish anyone else to benefit from the property should something unexpected happen and you pass away. Joint Tenancy is most commonly adopted between married couples where there is perceived to be no advantage in defining separate shares in the property and where it would be the intention that on first death the property automatically pass to the surviving spouse.

You also need to be confident that your view on this will not change. If, for example, a couple were to separate and one of them die suddenly, the other would inherit the whole property, even if this would not have been the wish of the deceased owner.

Holding as **Tenants in Common** provides the owners with more flexibility to decide what to do with the individual share. It is also a way of reflecting the financial contributions of each other in purchasing the property, as the shares do not have to be equal. This is the basis of ownership often used between unmarried couples, brothers and sisters, parents and children, business partners and the like.

Declarations of Trust can be put in place between two owners, not only to show the proportion which each party owns (for example, on initial contributions) to set out how each owner contributes to the upkeep/outgoings of the property or indeed the mortgage payments and also to set out what should happen procedurally, if a sale were to take place, or alternatively, to deal with the situation whereby one co-owner wishes to sell the property and the other does not.

In hand with owning a property as Tenants in Common, it is essential to ensure that each individual has a valid Will in place to set out how their share of the property (and indeed other assets\*) should be dealt with should that person unexpectedly pass away.

By putting a Will in place, the deceased owner's share will pass in accordance with his wishes – for example to his or her co-owner, or to another named beneficiary, if this is what he would wish.

In the case of unmarried couples, Wills can be used also to specify for example that the gift to the co-owner will only pass if they are still living together at the date of death and therefore the Will can be used flexibly to pre-empt unfortunate circumstances such as separation which might otherwise have lead the deceased co-owner to pass their share of the property elsewhere.

Conversely, if holding as Tenants in Common without a valid Will in place, if a co-owner should die, their share of the property will pass in accordance with the Intestacy Rules\*\* which are inflexible and can lead to results which the deceased person would not have wished, for, as they may otherwise have wanted their share of the property to pass to their co-owner. Without a Will, the co-owner would either have to find the funds to buy out the deceased co-owner's share of the property, or be forced to sell the entire property in order to settle the sum due to the estate of the deceased.

The lesson here is that it is essential to ensure you make your wishes clear during your life-times to cover the unexpected. Leaving things to fate could lead to drastic consequences which you could never have wished upon your co-owner, or indeed individuals whom you would have otherwise wished to have benefitted from your assets in the circumstance of your death.

\* Please refer to our article on the 'Intestacy Rules'.

\*\* Please refer to our article on 'Putting Wills in Place'.