

# Checklist: Co-Ownership of Property

**If you own, or are about to purchase, a residential property with another person or persons you need to consider how the ownership is to be structured**

Co-owners can own a property in one of two ways:

- As joint tenants.
- As tenants in common.

It is important to specify how you want to own the property when you are buying it, to avoid any uncertainty in the future.

## Joint tenants

If you own a property as a joint tenant, you and your fellow joint tenant(s) own the whole of the property together. You will not have a quantifiable share in the property and you will not be able to leave a share of the property in your will. If you sell the property, or if you separate from your fellow joint tenant(s), it will be presumed that you own the property equally, regardless of the respective contributions to the purchase price.

## Survivorship

The right of survivorship means that if one of your co-owners dies, their share in the property will automatically pass to the remaining co-owners without any further action being required. The surviving co-owner(s) would then own all of the property. When the last co-owner dies, the property will form part of their estate. Married couples or civil partners often own a property as joint tenants because the right of survivorship makes it straightforward to inherit each other's shares in the property.

## Severance

If you own a property as a joint tenant, but decide that you want to split your interest in the property, the joint tenancy can be "severed" and turned into a **tenancy in common** at any time.

## Reasons not to become joint tenants

- If one joint tenant has made a larger contribution to the purchase price of the property, you may want this to be recognised if the property is sold or if you separate.
- A joint tenancy is unsuitable if you have a family from an earlier marriage and want to leave your share in the property to them, instead of passing it to your fellow co-owner.

## **Tenants in common**

If co-owners own a property as tenants in common, they each have a distinct share in the property. The shares can be equal, but they do not have to be. It is advisable for co-owners to state the proportions that the property is owned in, rather than leaving it to be implied from the circumstances and the financial contributions made by each co-owner.

Your share of the property can be passed on to another person, either during your lifetime or under your will. If you do not have a will at the time of your death then your share will pass in accordance with the rules of intestacy.

## **Declaration of trust**

A declaration of trust is the document that formally records that you and your co-owner(s) own the property as tenants in common and sets out your respective shares in the property. If you sell the property, or if you separate from your fellow tenant in common, the declaration of trust will be referred to in order to work out your entitlement to the sale proceeds from the property.

Holding property as tenants in common may be appropriate if you have children from a previous relationship and you want them to inherit your share when you die, rather than your co-owner. It may also be appropriate if you have made unequal contributions to the purchase price of the property.

## **More information**

If you have any questions about the content of this checklist, please contact Gillian Humphreys or Margaret Marshall (see “Our People” or “Contact Us”)

