

Buying Your House Together - The Legal Consequences

If you buy a house or flat jointly with a husband or wife, civil partner, fiancée, partner, friend or colleague, it is very important that you understand and resolve what is often considered to be a rather tricky legal problem

Should you hold the property as joint tenants or tenants in common?

Joint Tenancy

If one of you dies the survivor automatically becomes entitled to the whole value of the house regardless of anything that might have been in the deceased's Will. Depending on your personal circumstances this may not be what you intend, it may be considered 'unfair' and could result in others you wanted to financially provide for losing out.

Tenants in Common

If one of you dies the surviving partner? will **not** automatically be entitled to the whole value of the house and the ownership of the deceased's share will depend on the wishes of the deceased contained in his or her Will (or be governed by the law relating to intestacy if that person dies without having made a Will).

Where a married couple or civil partners are purchasing a property, one cannot ignore the consequences of a possible divorce. The way in which you jointly own a house should therefore depend on your individual circumstances, for example if one or both of you has been married before and had children from that previous relationship, it is not unusual for the divorcee who remarries to want the whole or part of their share in the new house to be left to the children from the previous relationship (the same can also be true where somebody has been widowed and then also remarries). In these circumstances it is essential to hold the property as Tenants in Common and to make a Will setting out your intentions. A divorce court is not bound by the terms of any Trust Deed, but it is likely to be persuasive evidence of the parties intentions.

Particular advice should also be given to anyone who is buying a house before they marry, perhaps

buying with no firm intention of getting married or buying with friends, relatives, business associates, etc. They should consider carefully whether they choose to be Tenants in Common rather than Joint Tenants. As they are not related by marriage they are not automatically each other's next of kin. Unless they make Wills in favour of each other, on the death of one, the survivor will not automatically be entitled to the deceased's share of the house unless they bought the house as Joint Tenants. You also cannot ignore the possibility that the relationship may not be permanent and the house may have to be sold or transferred into one name.

It is also not unusual for one person to contribute all or a major part of the purchase monies even though they may both contribute equally to the monthly mortgage payments. If one person is making a larger contribution towards the house purchase then their larger share of the value of the house can be shown in writing by means of a simple Trust Deed which is then lodged with the Deeds to the property and registered with the Land Registry. A Trust Deed provides evidence of the joint purchasers' intentions as to how their shares in the house should be divided on a sale, for example 50 : 50; 60 : 40; etc. This evidence is however only persuasive and not binding. A court can look at other factors; such as contributions towards the mortgage, household maintenance costs, etc. It is our advice that anyone buying a house jointly with another and, where they are not married, they should buy as Tenants in common with a Declaration of Trust.

Finally, you will probably realise how important it is to make a Will especially if you are buying a house. A spouse does not automatically inherit the whole value of the deceased's estate which includes the matrimonial home if they die intestate and if joint purchasers are unmarried and choose to be Tenants in Common where there is no Will made the deceased's share usually passes to their next of kin.