

# Joint Ownership - Client Guide

What you need to know | The choices | Worked examples

## Unmarried?

If you are not married, it is very important to legally agree now whether you each own half the property or some other proportion. What you agree now may well decide what happens to the property and the division of the money when the property is sold: such as if one of you dies, or if either or both of you want to sell the property.

## Married?

If you are married (or in a civil partnership) and your relationship breaks down, then the family law courts have power to decide what should happen to the property and might over-rule any decision you make now. However it is still important to consider what shares you hold in the property now, as the decision will affect what happens should one of you die. There could also be important tax consequences to think about.

## Business Property?

If you are buying the property as business partners, as an investment, or a buy-to-let property then it is vital that you agree the proportions of your shares in the property and what will happen if one or both of you want to sell it. You will probably want to hold it as Owners in Shares and have a formal Deed of Trust prepared setting out the way in which the property will be owned and managed.

## Advice

This guide is general advice only and we will need to discuss your specific circumstances to see what's right for both of you



## Why this is important

You are planning to buy a property together. This means that you have to make important decisions about your shares in the property before we can complete the purchase of the property.

This guide explains the two ways in which property can be held by joint owners. You might have contributed different amounts of money to the purchase. If so, you might want to own the property in shares in the same proportion as your contribution, rather than 50:50.

We need to know how you want to own the property together and the proportions of your shares so that we can complete the transfer documentation properly. We need to note your decision on the legal title when we register your purchase at Land Registry to protect each of your interests in the property. It is important that you consider this as soon as possible, preferably before you become committed to buying the property on exchange of contracts.

## Thinking ahead...

In making this decision, you will need to consider what is to happen to each of your shares if one of you dies or if your circumstances change. For example, if your relationship breaks down you might decide that the property should be sold and the proceeds divided between you.

No-one wants to think about such things at this time. However no-one can predict what the future holds. If you do not make a clear decision now it could easily cost at least £15,000 in legal fees and take years to





## John & Mary

John and Mary are an unmarried couple who have children from previous relationships.

- John is putting £200,000 into their new house
- Mary is putting in £100,000

The house is to be in their joint names.

They may decide to own the house as **Joint Owners**. If John dies, his share will go to Mary not to John's children. If Mary then dies, the house will go to Mary's children, or in accordance with her will. Mary may leave part of the house in her will to John's children but she might change her mind after John's death.

If they decide to buy as **Owners in Shares**, with a 2/3rd share to John and 1/3rd share to Mary, if John dies and the house is ultimately sold all his 2/3rd share will go to his children.

They may consider making mutual wills allowing the other party to live in the house until the survivor dies, and only then will the shares be divided up.

When Mary dies, her 1/3rd share will then go to her children or in accordance with her will.

resolve the issue if the courts have to decide how the property should be split. Thinking about this now can prevent unpleasantness and save money should things ever change in the future.

## 'Joint Owners' or 'Owners in Shares'?

You can own property jointly as 'Joint Owners' (legally known as Joint Tenants) or as 'Owners in Shares' (legally known as Tenants in Common). The legal terms do not have anything to do with leases or tenancy agreements, they are just the legal terms for the two ways you can jointly hold property with someone else.

### 'Joint Owners' - Option A

If you own property jointly with another person as Joint Owners it means that you each have equal shares in the property. It doesn't matter how much money you each put into the purchase of the property, whether you put in equal or un-equal amounts, the result will be 50:50 or equal shares.

If one of you dies, then that person's share in the property automatically goes to the other owner; regardless of what it might say in the deceased's will about the property.

The property will not even form part of the deceased's estate for Inheritance Tax purposes. Also, any bequests of their share in the property will have no effect. So, when the remaining owner dies, all the value of the property will go as directed in the will of the surviving owner (or to their family if they have not left a will) and none of it will necessarily go to the family of the first owner to die.

### Converting 'Joint Ownership' to 'Owners in Shares' - the 'Notice of Severance'

You can change from being 'Joint Owners' to 'Owners in Shares' by 'Severing the Joint Ownership'. This is a legal phrase that refers to what happens when you give the other owner of the property a written notice saying that you 'Sever the Joint Ownership'. From the moment you serve the notice, the property will be held by you as Owners in Shares. The shares are held generally in equal shares, regardless of how much you each contributed to the purchase of the property.

You do not need the agreement of the other owner to 'Sever the Joint Ownership' of the property. Normally, all you need to do is give them the Notice of Severance. In some cases, even if they do not receive the Notice of Severance for example if the notice is properly sent by post to their address but they don't receive it) the Joint Ownership will still be severed and converted to an Ownership in Shares. Bankruptcy and various other situations will also automatically sever the joint ownership.





## Sue & Steve

Sue and Steve are an unmarried couple who bought a house for £400,000 ten years ago.

- Sue put in £200,000
- Steve put in £100,000

They had a mortgage of £100,000

The house was bought in their joint names. They didn't want to think about the way in which the house was to be held jointly. As a result it was owned by them as **Joint Owners** by default.

Soon after buying the property they decided to start a family and had two children. However, the relationship broke down and Steve left the house and bought another house with his new partner. Sue stayed in the house and paid all the bills. Neither of them took legal advice.

Steve eventually wanted to take his share out of the house, but Sue refused to sell. The court decided that Steve was only entitled to 10% of the value of the house. Had Steve taken legal advice and agreed with Sue to convert the ownership to 2/3 and 1/3 Owners in Shares when he moved out, he might have kept his share.

If you want to sever the joint tenancy you should get legal advice to make sure that the Notice of Severance is dealt with properly and noted at the Land Registry. If you are served with a Notice of Severance by the other co-owner of the property you need to seek legal advice immediately on its effect, in case it is necessary to take action to protect your share of the property. This is going to be particularly important if you don't agree that the shares should then be held equally (50:50).

## 'Owners in Shares' - Option B

With joint ownership as 'Owners in Shares' you can set your shares at 70%/30% or 50%/50% or any other proportion. The shares might represent how much you each put in to the house purchase. You can even agree at the outset that the proportions of each share can change as time goes by if, for example, one of you carries out improvements or pays off some of the mortgage on the property. You might want to allow one person to buy out the other person's share in the property, at a price agreed between you or assessed by a valuer.

You also have to think about what will happen if one of you dies. If that happens, then the deceased's share will not go automatically to the other owner of the property but will go to whoever they left their share to in their will. If they haven't made a will then their share will be dealt with under the law of intestacy, under which their share might go to the deceased's spouse or children, or other family members.

You can, of course, still each leave your shares in the property to the other joint owner if you want to, but matters will often be more complex where you each have children or other relatives that you want to leave your respective shares to. You might also want to ensure that the property cannot be sold until the other owner dies or wants to sell it. All of these points can be dealt with in a 'Declaration of Trust', prepared separately.

## Other things to think about

You might want to think about what happens if, for example:

- One of you wants to sell the house - can they force a sale?
- Who can live at the house, can your co-owner invite friends to stay?
- Does one of you have the right to buy out the other's share and how will this work in practice?
- What happens if one of you leaves the property? Does the remaining owner have to pay any rent to the owner who left?
- Who is responsible for paying for repairs, maintenance and insurance, or the mortgage payments, fuel bills or other outgoings - are they paid 50:50 or are they paid in proportion to your shares in the property?
- Negative Equity. If, for any reason, the property has to be sold for less than the amount outstanding on the mortgage, then the bank can pursue either or both of you for the full amount of any shortfall. You





## Cheryl & James

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Cheryl put in 90% of the money for their new house as she inherited some money from her dad. They didn't want to think about how their property was to be jointly held as it seemed un-romantic and negative. It was owned by them as **Joint Owners** by default.

They started a family and had three children. Cheryl became ill and died when the children were only young. The children went to stay with Cheryl's mum.

Since the house was owned as Joint Owners by default, her share in the property went to James and nothing went to the children. James now has a new family with someone else and won't give anything to the children he had with Cheryl.

Had Cheryl and James originally agreed the property was to be bought in shares of 90% to 10% as Owners in Common then Cheryl's share could have gone to her children.

### Talk to us!

Please ask us to explain anything in this guide or discuss any unusual circumstances. We can then advise on what is best for you.

are each liable for the whole of the debt to the bank. If the bank chose to pursue just one of you for all the debt, then that person would have to claim a share off the other owner. If this happens, do you agree that the debts relating to the house should be shared in the same proportion as your ownership of the property?

- Life Insurance. You might also both need to think about taking out life insurance to pay off any outstanding mortgage should one of you die.
- Wills and Tax. You should consider making wills and also the impact of Inheritance Tax.

## How to choose which option is right for you

Everyone's situation is different and we will have to discuss your circumstances with you carefully before you make a decision but the following pointers may be helpful:

### Joint Owners - Option A

Choose this option if you are both happy that:

- You have equal shares in the property.
- Your share **will** go to the other owner automatically if you die and that if you die first, then your share will not automatically go to your children or other members of your family or friends or in accordance with your will.
- You accept that the other owner can convert the Joint Ownership of the property to Ownership in Shares at any time and that you will then own the property in equal shares or such other proportions as you agree at that time (or as the court may decide if you fail to agree on this point).

### Owners in Shares - Option B

Choose this option if you are both happy that:

- You have unequal shares in the property.
- Your shares will **not** automatically go to the other owner if you die. They may leave their share to you in their will, but they can change this at any time.
- You want your share to go to other members of your family or friends in accordance with your will.
- You want to provide for any of the possible issues mentioned in this guide in a separate Declaration of Trust document that we can prepare for you.

This is a general guide only, and each situation may be different and may need specific advice.

