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## Jointly Owned Property: Joint Tenants or Tenants in Common

It is frequently the case that a couple owns their home, whether a house or flat, in their joint names. The most common form of joint ownership, particularly where married couples are concerned, is where the whole of the property automatically passes to the survivor when the other joint owner dies. This is known as a *JOINT TENANCY* with the parties holding the property as *JOINT TENANTS*.

The other type of ownership is called *TENANCY IN COMMON*. *TENANTS IN COMMON* are treated in law as if they owned distinct shares in the property. When a tenant in common dies, that person's share passes in accordance with the terms of his or her Will, or under the rules governing intestacy if there is no Will. The share can be bequeathed by Will to the other tenant in common or to anyone else. The right of survivorship applicable to joint tenancy does not operate.

It is worth noting that joint tenants can only have equal rights in a property, whereas tenants in common can hold in different proportions if they so agree.

Whereas a joint tenancy ensures a certain measure of security for a surviving spouse\*, a tenancy in common provides greater flexibility when planning for inheritance tax. This does, however, assume that tenants in common have in place professionally drawn Wills, and that careful consideration has been given to how their interests in the property will be dealt with when they die. We would not recommend that a decision is made on this issue before proper advice is taken.

The legal costs involved in converting a joint tenancy into a tenancy in common are modest. Such a conversion is called a "severance" of the joint tenancy, and involves the service of a short notice by one joint tenant on the other or others (if there are more than one). If the title to the property is registered at the Land Registry, a small adjustment would also need to be made to this. However, the Land Registry do not require a fee and no stamp duty would be payable either.

It is also possible to convert a tenancy in common into a joint tenancy. This would involve the preparation of a Declaration of Trust signed by all the tenants in common. Again, if the property was registered, the title would have to be altered at the Land Registry but, as before, no Land Registry fees or stamp duty would be payable.

If a property is being purchased jointly by people other than in a normal marriage situation, it is *essential* that proper professional advice is taken as to the provisions that should apply to the property in relation to ownership, payment of any mortgage, payment of other outgoings and what happens if one party wishes to dispose of his or her share.

If you require further information, please contact Jeremy Passmore on 01892 510000 or by email at [jeremy.passmore@ts-p.co.uk](mailto:jeremy.passmore@ts-p.co.uk).

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\* All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004