

Jointly owned property: Joint tenants or tenants in common

Introduction

Where freehold or leasehold land is owned by two or more persons, it is of fundamental importance that the way in which they are to hold their shares in the property - whether as 'joint tenants' or 'tenants in common' - is properly considered and recorded.

Joint Tenancy

Perhaps the most common form of joint ownership, particularly where spouses* are concerned, is where the whole of the property automatically passes to the survivor(s) when one of the joint owners dies. This is known as a 'joint tenancy' with the parties holding the property as joint tenants.

Tenancy in Common

The other type of joint 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(s) in common or to anyone else. The right of survivorship applicable to joint tenancy does not operate.

It is worth noting that while joint tenants can only have equal interests in a property, tenants in common can own in different shares or proportions.

Implications

Whereas a joint tenancy ensures a certain measure of security for the other owner(s),

e.g. a surviving spouse, a tenancy in common

provides greater flexibility for the purposes of estate planning. This does, however, assume that the tenants in common have 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 decisions are made on this issue before proper advice has been taken.

Severing a Joint Tenancy

Converting a joint tenancy into a tenancy in common is called a 'severance', and involves the service of notice by one joint tenant on the other(s). A small adjustment is needed to the register of title for the property. However, the Land Registry do not require a fee for this and no Stamp Duty Land Tax will be payable either.

Dispensing with a Tenancy in Common

It is also possible to convert a tenancy in common into a joint tenancy. This involves the preparation of a Declaration of Trust signed by all the tenants in common. Again, the register of title has to be altered but, as before, no Land Registry fees or Stamp Duty Land Tax will be payable.

Conclusion

If a property is acquired jointly by people other than spouses in a stable marriage situation, it is essential that proper professional advice is taken as to the provisions that should apply in relation to ownership shares, responsibility for any mortgage, payment of other outgoings and

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Jointly owned property:

Joint tenants or tenants in common (continued)

what should happen if one party wishes to dispose of his or her share.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

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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

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