



It may well be the case that now, or even at some date in the future, you intend to: -

- a) Buy a home with a partner or
- b) Share ownership of a property already owned, with a partner

It is important to ensure that we receive your full instructions as to the manner in which you wish to hold the property (whether it is a freehold property or a leasehold flat) as there is more than one way. The important distinctions are these (and by the way, don't worry about the word 'tenants' – it doesn't mean tenants in the normal way):

Joint Tenants: Should you decide to hold the property as joint tenants you do not have 'separate shares'. On the death of one of you, the property will automatically pass to the survivor of you absolutely. The survivor will then own it as if he or she had purchased the property alone. If in fact there are more than two owners to start with, the situation is a bit more complicated and we will separately advise you as to the implications.

Tenants in Common: Should you decide to hold the property as tenants in common then each owner has a separate share and on the death of one of you, the share of that person will pass according to any Will that he or she may have made and if there is no Will then in accordance with the intestacy rules which are in force at the time. The property can be held in unequal shares if you wish. It is essential however that this is recorded either in the Deeds or in a separate Declaration of Trust – see also the further comments below.

Change from joint tenants to tenants in common: You can at any time, whilst the joint tenants are alive, serve a notice on the other owner saying that you want to change your share of ownership into a tenancy in common (i.e. a separate share that you can dispose of e.g. in your Will). This Notice should then be filed at the Land Registry in order that the change in ownership status may be registered. Changing in this way will give you a share equal to the number of owners (e.g. if two, one half; if three, one third) irrespective of the contributions each owner has actually made. If there are more than two owners, your serving a notice on them will only separate out **your** share and will not affect the basis of ownership of the others as between themselves (unless of course they equally serve notice on you and each other)

Usually, a husband and wife or civil partners will buy as joint tenants, unless e.g. it is a second or subsequent marriage and the parties want to preserve their contributions for the benefit of their existing children.

Where the parties are in a relationship but not married or in a formal civil partnership (or indeed where it is a business relationship) it will be more usual for them to buy as tenants in common and have their respective shares specified – **remember** the Court's power to redistribute shares in a property where a dispute arises is **very limited** as opposed to the wide powers it has when the parties are married or within a civil partnership.

In the case of tenants in common, we can prepare essential documents which indicate the shares in which the property has been purchased: -

- a) Where parties have made an unequal contribution to the purchase price, and want that to be reflected in unequal shares of the property
- b) Or in more complex situations where e.g. it is envisaged that in the future, one party will make greater contributions than another

Should you decide to proceed as tenants in common, it is particularly important that you each make a Will, to ensure that your share of the property on death passes to your intended beneficiaries. We have a Private client Department that can assist you with this.

We shall also need to make a record of the reason for which the property is being purchased and this can be included in any declaration of trust that we prepare for you. Should the unhappy day arise that there is a dispute between the co-owners, over whether or not the property should be sold; the reason for which it was purchased may well be a determining factor in deciding whether or not it is appropriate to sell the property.

Occasionally other people may contribute to the purchase price at the time of purchase, or may pay off some of the mortgage at a later stage: -

- a) An aging relative might move in with you and pay off some of the mortgage.
- b) Or perhaps a family member might have already lent you the deposit.

Should this be the case, it is important to make an accurate and contemporary record of whether or not you intend the person should have an interest in the property and if so how it should be calculated; or whether the money should simply be treated as a loan, and if so, on what conditions, including whether any interest is to be incurred and the method of repayment.

Should you prefer, it is possible for each person contributing financially to the purchase to seek separate and independent legal advice as to the current and future position of all of you, before proceeding with the transaction. If there is even a remote possibility that you might find yourself in dispute with persons making a financial contribution, or perhaps their next of kin, you may prefer the reassurance of each of you receiving independent advice – at least it never could be said that one of you bullied, persuaded or misled the other into an unfavourable agreement over the house.

If you have concerns over any of the matters raised, we should be pleased to advise and assist you further on those matters and suggest how you might accurately record and protect your interest in the property.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.