Your guide to Owning a Property Together.
Introduction to owning a property together

Be it your first property together, or your tenth, buying a property with someone is a very exciting time.

However, amongst all the excitement, there is also a great level of responsibility that comes with jointly owning property. It is essential that you hold the property in a way that best suits your circumstance in order to avoid a potentially complex legal situation.

There are two ways in which you can own property together; as Joint Tenants or as Tenants in Common. As co-owners you need to decide which way you wish to hold your property and instruct us of your decision on the Co-Own Property Instruction Form.

This is a very important decision as the way in which you co-own property may have implications for couples who separate, family or friends who pool resources to buy property together and even married couples wanting to minimise inheritance tax liability. Don’t worry though, with the help of this guide, we will help you make the best decision for you and your situation.
Joint Tenants versus Tenants in Common

Joint Tenants

As Joint Tenants, each co-owner holds an equal interest in the property i.e. you both own it equally. Should one of you pass away, your share automatically passes to the remaining co-owner(s) without the need to obtain Probate.

Most married couples tend to hold their property as joint tenants. However, this is not compulsory and married couples can opt to hold property as Tenants in Common if they wish.

If you decide to hold your property as Joint Tenants, it is essential that you understand the potential repercussion of this choice.

Either tenant can independently sever the Joint Tenancy agreement at any point without the consent of the other(s) by serving a Notice of Severance in accordance with section 36(2) of the Law of Property Act 1925.

Should this happen, the property is then automatically held as Tenants in Common which means the co-owner is free to leave their share of the property to whoever they wish.

Tenants in Common

As Tenants in Common, each co-owner owns a specific share of the property. This can be split anyway you wish e.g. 50/50, 70/30, 90/10. You can outline the shares in the enclosed Co-Owning Property Instruction Form. If you don’t specify any shares, the law will assume it’s a 50/50 split. If the property was ever sold you would receive the monetary equivalent of your share e.g. if the property sells for £250,000 and you have a 70% share, you would receive £175,000.

When one of you passes away, your share will pass to the Beneficiary(ies) named in your Will (or under the Rules of Intestacy if there is no Will). In other words, your share can go to whomever you wish (it does not have to go to the other co-owner(s)).

Unmarried couples, couples in a second marriage, business partners and those who have made unequal contributions to the deposit and/or repayments are advised to hold their property as Tenants in Common.
How do we know which one is best for us?

Has one of you put more money into the property than the other(s)?

- Yes
- No

Is one of you contributing more to the mortgage and/or the upkeep of the property?

- Yes
- No

Do you have any children from a previous relationship or any other dependencies?

- Yes
- No

Do you want them to benefit from your property after your death?

- Yes
- No

You are best to hold your property as Tenants in Common

You are best to hold your property as Joint Tenants

It is vital that your property is held in the most appropriate way for you. If you are unsure about what this is, we have prepared a series of questions which should help highlight if you would benefit more as Joint Tenants or Tenants in Common.
In your Terms of Business pack, you will find your Co-Owning Property Instruction Form. It is essential for you to complete this form and return it to us detailing how you wish to hold your property.

A Declaration of Trust is a legally binding document which clearly outlines what you each own and how the value of the property would be divided should you ever split up or sell up.

A Declaration of Trust records what each co-owner has contributed to the property including the initial deposit needed for the property, the mortgage repayments and/or the financial upkeep of the property. It is therefore an incredibly important document if one person has put in more money than the other.

Without a Declaration of Trust, co-owners could end up facing a potentially complex and unpleasant legal situation. If you don’t detail your individual stakes in the property and then later disagree on who should receive what, you may need to go through a very expensive and lengthy court case to sort it out.
A Declaration of Trust is just as important for Joint Tenants as it controls how a Joint Tenancy can be severed. Without one in place, either owner can independently sever the Joint Tenancy agreement at any point by serving written notice on the other co-owner(s) and does not need the consent or agreement of the other owner(s). The co-owner does not even need to get written acknowledgement from the other party that they have received the Notice of Severance, although it is advisable.

Should this happen, the property is then automatically held as Tenants in Common which means the owner is free to leave their share of the property to whoever they wish.

A Declaration of Trust can stipulate in what way a co-owner can change either a Joint Tenancy or Tenants in Common in the future thus preventing any nasty surprises.

We can deal with this for you with our fees starting at £250 plus VAT for any Declaration of Trust you may ask to be prepared during your conveyancing process. This fee can increase depending on the complexity of the Declaration of Trust.

If you do not wish to take out this added protection, please inform us of your decision on the Co-Owning Property Instruction Form.

GWlegal is unable to advise you further on this agreement as it will require you both to see independent solicitors but we think it is important that we raise your awareness of how they can best protect your interests.

If you would like more information about a co-habitation agreement, you will need to seek specialist legal advice.

In addition to a Declaration of Trust, we also advise all our clients co-owning property to have a co-habitation agreement, regardless of marital status. This agreement covers who is responsible for what, including bills, living expenses, furniture and maintenance.
The Vital Role of a Declaration of Trust: Case Studies

There have been two cases recently where a Declaration of Trust could have proved vital.

The first involved English cricketer-come-commentator, Geoffrey Boycott.

In 1996, the Geoffrey Boycott purchased a property with his lover Anne Wyatt. The property was held on a Joint Tenancy with both Boycott and Wyatt agreeing when either died, their share would pass to the survivor. Ms. Wyatt continued to live in the property alone until she died in 2009. Given their initial agreement, Boycott expected to inherit the whole property. This was not the case. In 2007, two years prior to her death, Ms. Wyatt severed the Joint Tenancy, leaving her half of the house to her niece. Despite claiming he had no knowledge that the Joint Tenancy had been severed, Boycott lost his case and half the house.

In this case a Declaration of Trust could have prevented the situation Boycott found himself in. Whilst he would not have been able to stop Ms. Wyatt from severing the Joint Tenancy, a Declaration of Trust would have ensured his knowledge of the Joint Tenancy being dissolved.

The second case involved unmarried couple, Leonard Kernott and Patricia Jones.

The couple met in 1981. Despite having two children together, the pair never married. In 1985, they bought a house for £30,000 which they held as Joint Tenants. Ms. Jones however paid the full deposit of £6000 from the sale of her previous home. In 1986, they took out a joint loan of £2000 which was used to build an extension on the property. Mr Kernott did some of the work himself. In 1993, the couple split. Mr Kernott moved out of the property and Ms. Jones continued to live there with their two children.

In 1999, the couple split. Mr Kernott moved out of the property and Ms. Jones continued to live there with their two children. Thirteen years later, in 2006, Mr Kernott indicated his intention to claim his share of the property. This prompted Ms. Jones to apply for a declaration which stated she owned the entire property, now worth £245,000.

A court case ensued which resulted in the Judge ruling in favour of Ms. Jones, upholding her claim that the common intention had changed and awarded Mr. Kernott just 10 per cent of the property’s value. Many think this ruling was the correct outcome given Ms. Jones initial financial investment and then her ongoing contribution after Mr Kernott’s departure while others believe Mr. Kernott got a bit of a raw deal. Either way had the couple taken out a Declaration of Trust in the first instance, and at a likely more amicable time, they could have avoided the court case altogether.

A Declaration of Trust is a legally binding document which clearly outlines what you each own and how the value of the property would be divided should you ever split up or sell up.
After buying a property, the next logical step is to make a Will, especially if you have chosen to hold your property as Tenants in Common in order to outline who you wish to inherit your property after your death.

Many people consider Wills and Estate Planning somewhat morbid. However, Estate Planning plays a central role in protecting your wealth, much of which is likely to now be wrapped up in your new property, to ensure the financial future of your family.

We are experts in finding solutions for individuals, business owners and families who want to safeguard their estate, ensure their loved ones are protected.

By placing your needs at the centre of our service, you and your family will benefit from a highly comprehensive, tailor-made Will which reflects your situation, objectives and addresses any challenges arising from your circumstances.

If you are interested in making a Will, please let us know by ticking the corresponding box on the enclosed Co-Owning Property Instruction Form. Your details will then be passed to our Wills and Estate Planning department who will be in touch to discuss your situation.
We appreciate there is a lot to take in and, chances are, you may have some questions. We are on hand to answer any questions you may have.

We have compiled some of the most frequently asked questions so have a read through and see if they can help. If you’re still a bit bamboozled, please don’t hesitate to get in touch.

We're married/in a civil partnership so how should we hold our property?

Most married couples or civil partners choose to hold their property as joint tenants. This is usually because they will want their partner to receive their share of the property if they were to pass away.

This is not compulsory though. If one partner has contributed more to the property or have children from a previous relationship, they may prefer to hold the property as Tenants in Common instead.

I've got children from a previous relationship who I would like to inherit my share of the property so what should I do?

If you and/or your current partner have children from a past relationship, it would be best to hold your property as Tenants in Common. This way you can leave your share to whoever you wish (assuming you have made a Will).

In this situation, it is also vital that you have a Declaration of Trust. A Declaration of Trust outlines each co-owners individual stake in the property so your children will inherit the right amount. It can also stipulate whether the surviving partner has the right to continue to live in the property until they pass away or wish to sell. Without this in place, your partner may be forced to sell the property in order to give your children their inheritance.

What if one of us is in financial trouble?

If either of you are in financial difficulties, or expect to be in the near future, you should take advice from an experienced financial adviser before buying property together.

However if you decide to go ahead, it is likely a Tenants in Common agreement would be the better option for you both. Holding property as Tenants in Common means only the share of the co-owner in financial trouble can then be actioned against by any creditors.

Joint Tenants jointly own the whole interests in the property. This means should you split up and wish to sell,

you will both get an equal share of the proceeds. Whilst it is understandable to think you will never find yourself in this situation, it is important to consider all possible outcomes and only you can decide if you would be happy with splitting everything 50/50.

If not, it is best to hold the property as Tenants in Common and agree now, at a more amicable time, what your shares in the property will be. It is also advisable that you set up a Declaration of Trust as it can outline in what way a co-owner can change the agreement in the future.

I want to hold the property as Joint Tenants but my partner wants to hold it as Tenants in Common. How do we decide?

The decision regarding how you hold your property...
is something you must reach on your own. As your conveyancer, we cannot make the decision for you nor settle any disagreement.

It is a very important decision and one that neither partner should feel forced into compromising. If you cannot make a decision, we would suggest that you both take independent legal advice. You should also think very carefully about whether you want to buy the property together at all.

A relative is helping us pay for the property. We are all planning to live together. What should we do?

It is essential that everyone involved in a situation like this is protected. Therefore it is wise that everything is agreed and recorded now to prevent any future disputes. It is advisable that the property is held as Tenants in Common and that a Declaration of Trust is drafted to record your relative’s rights over the property.

Should we be concerned about Inheritance Tax?

Inheritance Tax (IHT) is not applicable when a spouse or civil partner inherits from the other. This is called the ‘spousal exemption’ but does not apply to unmarried partners. This means if the deceased’s total estate exceeds the IHT threshold (Nil Rate Band) then their share of the property is taxable and could result in the surviving partner having to sell the property in order to pay the IHT bill. This can happen regardless of if the property is held in Joint Tenancy or Tenancy in Common.

There is also a knock on effect for your partner who will have a larger estate which could then mean a larger IHT bill when it is next inherited. Our Wills and Estate Planning department are specialists in finding solutions for individuals, business owners and families who want to safeguard their estate, ensure their loved ones are protected.

If you would like to find out more about estate planning, please let us know by ticking the corresponding box on the enclosed Co-Owning Property Instruction Form.

* Current Nil Rate Band (£325,000). Subject to change

Can we change our minds about being Joint Tenants / Tenants in Common?

If you are Joint Tenants, either of you can end the Joint Tenancy and create a Tenancy in Common whenever you wish by giving a notice to the other co-owner(s). This is called severance. You should take advice if you plan to do this as once the notice is given, all automatic rights, such as the automatic inheritance of the co-owners estate upon death, is revoked. The property will then be inherited according to the Will of the deceased or, if there is no Will, the Rules of Intestacy.

If you are Tenants in Common, you can become Joint Tenants but only if you both/all sign a Declaration of Trust in which you all agree to the creation of a Joint Tenancy.

If we split up, will the property automatically be sold?

If you are married or in a civil partnership, the relevant Court will decide what happens to your property.

If you are not married, and one of you applies to the Court, the Court will order a sale (subject to the Court being satisfied that it is appropriate to do so). If there is good reason for not doing so (e.g. because of young children), the Court may order the sale to be delayed. If you have a Declaration of Trust that restricts the power of sale, the Court will pay attention to that as well.
If our dedicated team of experts can offer any assistance we’d be delighted to hear from you

0345 373 3737

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