

JOINT PROPERTY ACQUISITION FORM

YOUR NAMES:

Attached to this form is our summary of the current law relating to joint ownership of property.

Please both read the attached note before completing this form and returning it to us. We would prefer that, before signing this form, you see one of the solicitors in our Family Law Team for a free half hour interview to go through briefly what is a very important decision in an area of developing and sometimes complex law.

Please tick if free half hour appointment required, and give us your preferred contact phone numbers here:

Please read on if you do not require the free appointment, or are uncertain about it.

Because of the various options that are available, and the significant consequences of which option you choose, we cannot cover everything in this form, which is why we would prefer you to have the free appointment referred to above.

NATURE OF RELATIONSHIP

The options referred to below and overleaf apply to all joint owners whatever the nature of their relationship. However in divorce or proceedings dissolving civil partnerships, the Court has wide-ranging powers to make a variety of financial and property orders. These can change the property ownership shares to achieve an overall outcome which the Court thinks is fair regardless of which of the four options set out below was chosen. So, when considering those four options, you should keep in mind that, on a divorce or a dissolution of a civil partnership, the Court may decide to change the ownership shares as part of a settlement.

However, the option chosen will still be extremely relevant where it is the death of a spouse or civil partner which ends the relationship.

OPTIONS

When you acquire a property in joint names, you will have four options as to declaring how you wish to own the property:

1. Joint tenants
2. Tenants in common in equal shares
3. Tenants in common in unequal shares
4. No declaration

The main consequences of each option are:

1. Joint tenants

- (a) On separation, the property will be regarded as belonging to you equally, ie half each.
- (b) When one of you dies, the survivor will automatically become the sole owner of the whole property, regardless of the terms of any Will made by the deceased owner.

2. Tenants in common in equal shares

- (a) The property is regarded as belonging to you equally, ie half each.
- (b) When one of you dies, the survivor will own 50% of the value of the property and the other 50% will be dealt with in accordance with the terms of the Will, if any, made by the deceased owner. If there is no Will, then the Law of Intestacy will decide what happens to the half share. The Law of Intestacy may not do what the deceased would have wanted, and a tenant in common should always make a Will to deal with what is to happen to his or her share on death.

3. Tenants in common in unequal shares

- (a) The property will be regarded as belonging to you in the unequal shares as declared by you at the time of acquisition.
- (b) When one of you dies, the survivor will own his or her share as declared at the time of acquisition, and the deceased's share will be dealt with in accordance with the terms of the Will, if any, made by the deceased owner. If there is no Will, then, as referred to in 2(b) above, the Law of Intestacy will decide what happens to the deceased owner's share, so a Will should always be made in these circumstances.

4. No declaration

In the event that there is no declaration of ownership, this will leave a gap and a potential for significant dispute at a later date as to what the ownership shares should be.

In circumstances where a couple have acquired a property jointly but have not declared the shares, then the starting point will be that the intention was to share the property equally, ie 50/50, but the Court does have the power to find that the intention was in fact to share unequally. The Court could find either that that intention to share unequally existed at the time that the property was acquired or that, although the intention at the time of acquisition was to share equally, that intention has changed since the property was acquired.

In certain circumstances, the Court might even impute an intention, which is in effect the Court deciding for the owners what the intentions should have been and what would be the fair outcome in all the circumstances of the case.

If you wish to avoid or minimise the risk of subsequent dispute over the ownership shares, then it is strongly recommended that there be a clear declaration of intention at the time the property is acquired.

If, having read this form and the attached notes, you are able to tell us which option you wish to choose, then please tick the relevant box and sign and date this form and return it to us. If you are not sure how to proceed, then we hope you will take up the offer of the free interview referred to above.

1. Please tick here if you wish to own as **joint tenants**

2. Please tick here if you wish to own as **tenants in common in equal shares**

3. Please tick here if you wish to own as **tenants in common in unequal shares** and please also confirm in what shares you wish to own:

_____ % to _____

_____ % to _____

4. Please tick here if you do not wish to make any declaration as to ownership shares

Signed _____

Dated _____

Signed _____

Dated _____

JOINT OWNERSHIP OF PROPERTY INFORMATION SHEET

There are basically two ways of owning a property in joint names, as either:-

- Joint Tenants
- Tenants in Common

1. JOINT TENANTS

The main consequences of owning as joint tenants are:-

- (a) that the survivor of the two owners will automatically become the sole owner of the whole property, whatever any Will of the deceased owner might say;
- (b) that the ownership shares are not declared, with the presumption being that it was intended that the value of the property be shared equally.

2. TENANTS IN COMMON

The alternative way of owning the property is more common in unmarried relationships and in second marriages or civil partnerships than in first marriages or civil partnerships. The main consequences of this are:-

- (a) that each owner can leave his or her share in the property by Will to somebody other than the other joint owner;
- (b) that the parties can declare the shares in which they own the property (e.g. 75% to A, 25% to B). This may be particularly useful where there is unequal contribution to the cost of purchasing the property. The absence of a precise declaration as to the shares of ownership may increase the risk of expensive litigation if the parties are unable to agree how the equity in the property should be shared, and could result in an outcome which might not have been the outcome the parties would have expected or intended at the outset.

3. CHANGING MODE OF OWNERSHIP

In a joint tenancy, either party can, without the other's co-operation, convert the joint tenancy into a tenancy in common. This is known as severing the joint tenancy. The other party has to be informed of what is happening, but his or her permission is not required. The severance of the joint tenancy is then noted on the Title Deeds or at the Land Registry. It would be important to combine the severing of a joint tenancy with the making of a Will, so as to ensure that the share of the property went to the person to whom the party intended it to go, particularly if the proposed beneficiary is not the other party's next of kin, as, if no Will is made, then the Law of Intestacy will decide what happens to the deceased's estate and could decide that the beneficiary should be somebody who would not have been the chosen beneficiary of the deceased had he or she made a Will.

In a divorce or dissolution of a civil partnership (a same sex relationship registered under the Civil Partnerships Act 2004), the Court is not bound by the declared ownership arrangements and within an overall settlement the Court can make a variety of orders, (e.g. immediate sale, transfer from one owner to the other, adjustment of the ownership shares, deferred sale, etc.).

4. DETERMINING SHARES IN PROPERTY

In the event of a dispute arising over the shares in the value of a property, where the relationship is not a marriage or a civil partnership the Court will not have the wide-ranging discretion that it has when dealing with a divorce or the ending of a same-sex relationship that has been registered in accordance with the provisions of the Civil Partnerships Act 2004.

Essentially, in cases involving the termination of a marriage or a civil partnership, the Court can look to the future as well as to the past, with the objective of doing what is fair having regard to all of the circumstances of the case.

Where the relationship that ends is not a marriage or a civil partnership, the Court's role is usually more restricted. If the parties have specifically declared their financial interests in the property, then the Court is unlikely to interfere with this.

If the parties have not declared their financial interests in the property, then the Court's role, unlike within the termination of a marriage or a civil partnership, is limited to looking back in time to work out what the parties are taken to have intended, and that will determine the outcome.

It is possible for the Court to find that the parties have changed their common intention any time after completion of the acquisition of the property. A change of intention may be found:

- (a) by reference to specific declarations by the parties of a revised agreement;
- (b) by the Court inferring a change of intention as to shares from the statements or the actions of the parties, even if there is no formal declaration of such change;
- (c) by the Court imputing an intention to the parties where the statements and/or actions of the parties do not provide sufficient evidence for a Court to infer what their intentions were. This last example is in effect the Court deciding for the parties what the Court finds to be a fair outcome, having regard to the circumstances of the case.