

OWNING A PROPERTY TOGETHER: WHAT YOU NEED TO KNOW

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CONVEYANCING SERVICES

- Freehold Sales and Purchases
- Leasehold Sales and Purchases
- Lease Extensions
- Lease Variations
- Commonhold Property
- Help to Buy Scheme
- Remortgages
- Transfer of Equity
- New Build Properties
- Shared Ownership and Staircasing
- Rights to Buy Scheme
- Services for Developers
- Sale of Property pursuant to a Compulsory Purchase Order

JOINT OWNERSHIP OF LAND

When you buy land you normally buy both the legal and beneficial interests in that land.

A simple distinction between the two types of interest is that the legal interest is the land itself and the beneficial interest is in the value of the land.

If more than one individual or “non natural body” buys land then they will own the legal interest as joint tenants but will have to decide how they are going to own the beneficial interest.

The two methods are:

- Joint Tenants
- Tenants in Common

What is the difference between the two?



JOINT TENANTS

- You hold both legal and beneficial interests together ie you are a single legal entity or a sole owner
- If one of you dies that person's interest automatically passes to the other

TENANTS IN COMMON

- Legal interest is held equally and jointly
- Beneficial interest is held in specific shares
- If one of you dies that person's interest passes in accordance with their will or intestacy.
- The assumption is that the beneficial interest is held equally but you can specify other shares and this is where a declaration of trust normally comes into play

THERE IS NO HARD AND FAST RULE AS TO WHICH ROUTE TO FOLLOW BUT...

Joint Tenants

- Married partners

Tenants in Common

- Unmarried partners
- Those in second marriages / relationships
- Friends clubbing together to buy a property
- Business partners
- Parental help
- Unequal contributions

CONSIDER:

- Contribution to purchase
- Contribution to mortgage or upkeep
- Children from previous relationships
- Dependants
- Death
- Business
- Old age

WHAT CAN A DECLARATION OF TRUST CONTAIN?

- Parties
- Contributions
- Proportions in which the beneficial interest is to be held
- What happens if one party wants to leave ie if it is not specified in a declaration of trust



SEVERANCE OF JOINT TENANCY

- Notice
- Alienation
- Agreement
- Conduct
- Bankruptcy/Charging Order
- Homicide

TERMINATION OF CO-OWNERSHIP

- Partition
- Overreaching
- Merger

MEET CHARLOTTE



- Charlotte is just about to finish her Psychology degree and looking at a Masters & PHD in Clinical Psychology at the University of Birmingham. This would require relocation for the next 3 years.
- Charlotte is now 22 and has managed to save a deposit with assistance from a Help to Buy ISA which gives a 25% bonus on maximum monthly payments in of £200.
- The parents of Charlotte are keen for her not to have to continue paying rent to a landlord. They could use the savings that they have squirrelled away over the years and also drawdown on their pension freedom lump sums to assist with her deposit.
- Charlotte is not currently in a stable relationship but her parents are concerned that they might not approve of a future partner.

THE OPTIONS

The options available to Charlotte's parents are the following:

1. An outright gift
2. Become a guarantor for a mortgage
3. Become a party to a mortgage
4. A loan which may be secured on the property
5. Loan the money and ensure Charlotte makes a declaration of trust

AN OUTRIGHT GIFT



- No trigger for higher rates of Stamp Duty Land Tax
- A gift should be considered carefully so as to avoid the gifting party being liable for IHT. Not that you will be planning your departure date but a person making a gift will need to live for 7 years after the date of the gift for it to be exempt of IHT.
- There is an annual allowance of £3,000 per year and this can be carried forward for a year also, meaning Charlotte's parents together can gift £12,000 without IHT implications.
- There is no control for Charlotte's parents if they don't like the future partner!
- No ability to reclaim the money back if it is needed

BECOME A GUARANTOR FOR A MORTGAGE

- No trigger for higher rates of Stamp Duty Land Tax
- By acting as a guarantor, control is lost of any money contributed
- The guarantor can be liable for the whole of the debt

BECOME A PARTY TO A MORTGAGE

- The investment is secured
- Involved in any dealing with the property
- Named on the title for the property which would trigger higher rates of Stamp Duty Land Tax if a main residence is already owned by Charlotte's parents, in the case of a £200,000 property, this would be £7,500.00 rather than £1,500.00 (and that is Charlotte's savings going to the tax man!)
- Possible Capital Gains Tax liability on the parent's share in the property when the property is sold because it is not their principal private residence

A LOAN

- The investment may be secured
- Potentially, the property can be disposed of without consent/ repayment of the loan if it is unsecured
- The loan may be for a fixed sum repayable on a specified event, either a future date or an event such as a sale
- A water-tight loan agreement would be advisable to regulate the arrangement and the agreement could be set up for monthly instalments repayments with or without interest

A LOAN

- If there is a mortgage lender they would need to approve the second charge as any repayments under a loan agreement would reduce affordability under the main mortgage
- If there is a first lender then the first mortgage could make provision for further advances which would eat into the investment but a clause could be added to prevent further drawdowns under the main mortgage without consent
- There is uncertainty as to whether or not a non-commercial legal charge would trigger higher rates of Stamp Duty Land Tax

GIVE THE MONEY TO CHARLOTTE AND ENSURE SHE MAKES A DECLARATION OF TRUST

- A declaration of trust will set out the amount contributed and how the property is held
- This is a great tool for documenting the ownership structure of the property, what happens in the event of a sale and can also contain bespoke clauses for example: options to purchase a larger share in the property; ability to request a sale or who pays the insurance
- It can be teamed up with a restriction on the title of the property preventing a sale without the consent of the parties named in the declaration
- Protection of the contribution in the event of the undesirable S O ("significant other")
- The higher rate of Stamp Duty Land Tax may kick in if the parents own their own house
- Capital Gains Tax liability on parent's share



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PROPERTY OWNERSHIP – PITFALLS & PREVENTION

- What happens when a relationship breaks down?
- Joint owners
- Sole owners
- Establishing an interest
- Protecting an interest
- Cohabitation Agreements
- Wills
- But first....



THAT'S JUST NOT CRICKET

Daily Mail

**Geoff Boycott goes in to bat
and sues lawyers after losing
half of £2.5m Sandbanks
mansion when former partner
died**



COHABITATION

- Cohabiting couple families were the fastest growing family type between 1996 and 2016, with the numbers more than doubling
- 1996 – there were 1.5 million couples living together
- 2015 – this had risen to 3.3 million
- “Common law wife” – no such thing
- What is the Law?



COHABITATION

- **Burns v Burns 1984**
- Valerie and Patrick weren't married, but were together for almost 20 years. They had two children together, and Valerie changed her surname to "Burns"
- The family home was in Patrick's sole name
- Valerie worked and paid towards the running of the household – bills, groceries etc
- When the relationship broke down, the Court decided Valerie had no interest in the family home.

PREVENTION IS BETTER THAN THE CURE

- If one of you is contributing more to the purchase – get a Declaration of Trust
- Set out from the outset your understanding and intentions towards the property – this avoids disputes later on.
- Consider entering into a Cohabitation Agreement



JOINT OWNERS

- Are you Joint Tenants or Tenants in Common?
- Do you need to sever the Joint Tenancy?
- Do you need to update your Will?
- Is there a Declaration of Trust?



DECLARATION OF TRUST

- Should be straightforward
- Check for Pre-emption Rights in the Trust
- This should set down the procedure for the sale of the property or for one party to buy the other's share

NO DECLARATION OF TRUST

- In the absence of a Declaration of Trust, the presumption is each party has an equal interest – so 50% of any net equity each
- This presumption can be challenged if a *common intention* can be established to demonstrate that the shares in the property should be different.
- Common intention can be shown by the conduct of the parties, or it can be imputed.

ONE SOLE OWNER

- An interest in the property could still be established for the non-owning party.
- This could be based on the *contribution* made towards the property, or from a *common intention*.
- Consider applying for a restriction at the Land Registry to register the interest.



CONTRIBUTION – RESULTING TRUST

- If you have made an actual contribution to the purchase
- If you have contributed towards a repayment mortgage
- The share can be quantified by the amount paid



COMMON INTENTION – CONSTRUCTIVE TRUST

- A common intention
- Detrimental reliance
- Unconscionable denial of interest



APPLICATIONS TO THE COURT

- Order for Sale
- Declaration of Interest



IN THE NEWS

Daily Mail

Advertising executive, 28, is ordered to pay her builder ex-boyfriend £50,000 after she refused to pay him his share of flat he renovated before they split up



THANK YOU

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