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Buying a home together

When two or more people purchase a house together they can hold the legal title between them in one of two ways: as joint tenants or tenants in common. The legal terminology may be confusing but it has nothing to do with tenancies and applies to both freehold and leasehold land.

So what is the difference?

Joint tenants

Joint tenants own the whole property together. They have no definable share in it and if sold the proceeds would be divided equally between them (even if the original price paid and any mortgage repayments were not equal). If one of the joint tenants dies then his 'share' automatically goes to the surviving joint tenant(s). This is the case even if the deceased's will leaves their share of the property to someone else.

Tenants in common

Unlike joint tenants, tenants in common each own a definite share in the property. For example, if there were two tenants in common then one could own 1/3rd of the property and the other 2/3rd, perhaps to reflect the amount of capital they invested in the purchase or the amount of the mortgage repayments they will be making. Their share does not automatically pass to the remaining tenant(s) in common on their death and will be dealt with under the terms of their will (or under intestacy laws if they have no will). It is therefore advisable to have an up to date will to deal with a new property purchase. If you would like further information regarding wills please visit our wills department.

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The way in which the property is to be dealt with can be as simple or as complex as the tenants in common wish. For instance they may wish for the property to be treated as equally shared between them or divided into defined shares or one party may be entitled the first £x,000 of any sale proceeds after any mortgage has been repaid, the balance to be shared equally, etc... The agreement between the tenants in common is written down in a declaration of trust. This document should be drawn up prior to completion of the property purchase so that their intentions are clearly recorded at the time of the transaction.

If, however, you are a tenant in common that doesn't have a declaration of trust in place it is not too late to have one drawn up (as long as the other tenants in common agree). If you would like to talk to somebody about this please contact us.

So which is the best type of co-ownership for me?

This is a matter of personal choice and circumstances. The joint tenants option is normally adopted by married couples where there is no perceived need to define shares in the ownership and it would be usual for the survivor to inherit the whole property on the death of one. However, there may be tax reasons why a married couple may wish to hold property as tenants in common. If you have any concerns please contact our wills/tax planning team.

For other circumstances, e.g. unmarried couples, parents and children or business arrangements it is more desirable for a specified share to be defined for each co-owner and therefore the tenants in common basis is more suitable.

To find out more visit www.gardandco.com.

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