

Buying a property with someone else

Joint Tenancy

If a property is owned as joint tenants, then on the death of one of the co-owner(s) the property will automatically transfer to the survivor(s), irrespective of the terms of any Will the deceased owner may have made.

It is for this reason that most married couples own property as joint tenants. Consideration should however be given to whether the co-owner(s) have obligations to other people (e.g. children of a previous marriage) when a tenancy in common might be more appropriate. There may also be potential inheritance tax advantages in opting for a tenancy in common.

If a property is owned as joint tenants there is a presumption that the property is owned equally. If one of the parties is providing a substantial capital sum (e.g. by way of deposit) or one of the parties will be bearing a higher proportion of the mortgage costs, and wishes this to be taken into account when the property is sold, it is not appropriate for the parties to own the property as joint tenants.

Tenants in common

If a property is owned as tenants in common, on the death of a co-owner his or her share passes by their Will or under the intestacy rules. The share can be left by Will to the surviving tenant(s) in common or indeed to anyone else. Owning the property as tenants in common allows the property to be held in unequal shares i.e. 60:40, 70:30 etc. to reflect monetary contributions and/or mortgage obligations.

To record this fact it is sensible to have a "Declaration of Trust" saying what shares the respective parties intend to have in the property. The Declaration of Trust can deal with such factors as who provided the initial deposit, who will be making the mortgage repayments and any loan made by a third party, (e.g. a parent, to assist with the purchase).

It is also important to consider making or revising your Will at the time of a house purchase. Failure to do so could result in your share of the property passing on your death in a manner not in accordance with your wishes.

Taxation Advice

We have a specialist team that can advise on a comprehensive range of taxation issues. Please contact us for further information in this regard.

What if we separate or divorce?

In the case of husband and wife, the divorce court has extremely wide powers to sort out and vary interests in property and no agreements between the parties in advance can override these powers. However, they only come into play when there has been a divorce.

A couple who has never been married cannot be divorced and cannot, therefore, use the divorce court powers to deal with property rights, maintenance, etc. However long or stable the relationship between an unmarried couple, if it breaks down their rights are mostly governed by property law and actual financial contributions.

Disputes between unmarried couples about property ownership can be very upsetting as well as being time consuming and expensive. If you are buying a property with someone else who is not your husband or wife, you should consider having a Declaration of Trust to set out clearly your respective rights and obligations, the cost is relatively inexpensive.

How else can Warners help?

When moving house it is always important to review your Will. This is particularly important because:

- If you are an unmarried couple your partner will not necessarily be able to inherit anything from you.
- If you are separated but not divorced your spouse is likely to inherit what you leave.
- If you run a business your Will is the means to providing someone else with the legal right to take over the running of it after your death.

RP-006-0317-1