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Informational Guide

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# Owning Your Home - Guidance For Couples



Our aim, as a firm, is to mitigate risk for you and give you peace of mind when you buy, what is potentially, your most valuable asset. This guide is to help you understand the issues you should consider when buying a property with another person. Although you cannot imagine being apart, the fact is couples do separate and eventually someone dies. It is wise to give some thought to what will happen then.



## How you can Own a Property as a Couple

### **Sole Ownership**

One of you owns the home, the other simply has a right to live there. If the owner dies and does not leave the home to the partner, they may be homeless.

### **Joint Tenancy**

You have equal shares, but if one of you dies, the other automatically owns the whole property. You cannot leave any part of your home to anyone else.

### **Tenancy in Common**

You own whatever shares you choose. If you die, your share forms part of your “estate”, which you leave to your family and friends. If you do not leave your share to your partner, the home may need to be sold and your partner may have nowhere to live. “Tenancy” is an old word for “holding” land and has nothing to do with landlords and tenants.

## Married Couples and Civil Partnerships

Marriage and Civil Partnerships provide protection if the relationship ends. The Courts can divide up the property to provide for the children and the financially weaker partner. It is still important to make the right ownership choice now, as that may influence the court’s decision.



## Living Together

Living together provides little protection, even when couples have been together for years. The Courts first look at what the parties agreed in writing when they bought the home, which is usually conclusive. Otherwise, all the Courts can do is to look back at the relationship to see how much each partner contributed to the home financially. If you share things equally, each is likely to get half the house. If one of you (A) pays for everything to do with the house and owns it, and the other (B) pays for everything else, (A) may get the whole house and (B) may get nothing.



## Your Choices - More Information

### Sole Ownership

- One of you owns the home and the other simply has the right to live there.
- Only a spouse or civil partner can register the right to live in the property, but normally does not do so unless the relationship is under stress.
- Most lenders will not lend on a mortgage unless everyone over 18 living in the house signs a Joint Ownership document stating that they do not claim a right to stay in the property. This would stop the lender from taking possession of the house and selling it if they had to. Therefore, when only one of you owns the property, the other partner may not even have a legal right to live there.
- If the house has to be owned by just one partner, you both need to agree what will happen if the owner dies first, or if you split up, especially if there are children.
- It may be possible for the owner to sign a “declaration of trust” giving rights to the other partner. It is also vital for the owner to make a will, but always remember that wills can be changed, and automatically end on marriage.

## Joint Tenancy

- If you buy your home as joint tenants, it belongs to both of you equally, even if one person paid for everything. The person who pays the larger share is treated as having made a gift to the other.
- If the house is sold while you are both alive, you each get half the money. If one of you dies, ownership of the property automatically passes to the survivor. For couples who want to share equally and intend to stay together for life, joint tenancy may be the best way to share a home.
- The obvious problem is that when two people buy a property, they cannot be sure they will stay together for life.
- Always remember that either of you can write to the other saying you want to “sever the joint tenancy”, which will turn it into a “tenancy in common”. By way of example this means:

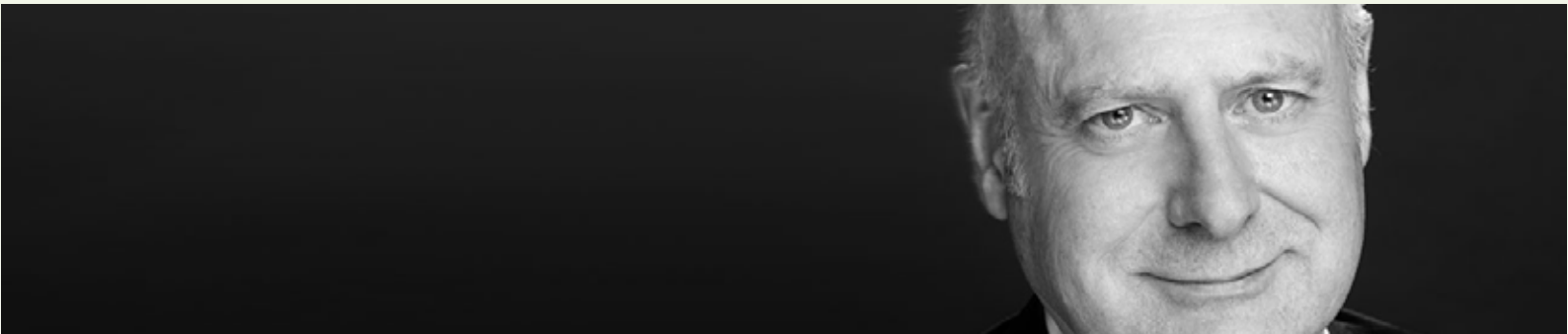
*Mr Smith and Mrs Smith buy a home as joint tenants. Mr Smith pays £300,000 for the couple's £400,000 home, they borrow the other £100,000. If a few months later Mrs Smith writes to Mr Smith to “sever the joint tenancy”, Mrs Smith will own a share worth £250,000 and Mr Smith cannot stop this happening.*

## Tenancy in Common

- For many couples today, especially where both have money and both work, tenancy in common may be the best choice.
- You can still own your home in equal shares if you wish, but if you put in unequal shares and wish to retain those shares, you must be tenants in common.
- Tenancy in common may also be the best option where you have commitments to children from a previous relationship.
- The shares belong to you to do with as you wish. You can leave your share to your partner in your will which is a wise thing for most couples to do. Many make “mirror wills” leaving their shares to each other to make sure their partner is not homeless if one dies. Unlike joint tenancy, where there is a tenancy in common, the surviving partner does not automatically receive their late partner's share.
- However, you can also give your share to someone else. You do not actually split the property up, of course. Your share is “undivided” until the property is sold, you actually own a share of the future sale price. But if you die leaving your share to your side of the family, then unless the surviving partner can afford to pay an equivalent sum of money to your relatives, the home will have to be sold to raise the necessary cash. If you do not want this to happen, you must make mirror wills as soon as possible.

## The Future

- It will be difficult to dispute the shares you own in the future if you have signed a Joint Ownership document which provides you with more security in case your relationship does breaks down.
- If you have any doubt, and want to talk to someone in confidence about your personal position without your partner present, please do that before you sign anything.
- It is also important to remember to change the Joint Ownership document if your circumstances change. For example, if you each pay £100,000 towards your home, and own equal shares, then one of you (A) spends £50,000 on an extension, you will still be treated as equal owners. If (A) then intends to own 60% of the shares and the other 40%, it is vital to change the Joint Ownership document while you are in agreement.
- Should your relationship end, you could save a lot of expense and uncertainty by taking legal advice as soon as possible. You may be happy for your partner to stay in the home with your children while you find somewhere else to live, for example.
- If you do not protect yourself, you could find that your share of the home is reduced as a result of that decision.



## Further Help

If you require help with anything mentioned in this guide, contact one of the team at Labrums now:

01727 858807  
crt@labrums.co.uk

We look forward to hearing from you.

*These guidance notes deal in general terms with a complex subject. While we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this guide and Labrums or its author can accept no responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this guide.*