

JOINT TENANCY OR TENANCY IN COMMON

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Joint Proprietors

Most properties and owners are registered at the Land Registry, the person (or people) who is the legal owner of the property is called **the proprietor** and their name is shown on the register of title to the property. If two or more people own the property together, they are shown on the register as **joint tenants** or as **tenants in common**. These are technical terms but their effect can be explained as follows:

- **Joint Tenants** This means that they own the property together in such a way that if one of them dies, his or her interest in the property passes to the other proprietor(s) automatically. No interest in the property will pass to the estate of the proprietor who has died nor can such a proprietor deal with the property in his/her Will. This is common where the joint proprietors are husband and wife.

- **Tenants in Common** own the property together, but each is treated as having a separate share in the value of the property. Typically, each will share the value of the property equally, according to their number, a half share if there are two, a one third share if there are three etc. However, the proportions need not be equal if the proprietors agree some other arrangement, and it is possible for other people who are not shown on the register to share in the property as well. This kind of arrangement is often used where the owners have each put up money of their own to buy the property.

Severing the joint tenancy

Where two or more proprietors hold property as Joint Tenants, it is possible for them to alter the way in which they hold the property so that they become Tenants in Common by **severing the joint tenancy**.

Restriction

Where property is held by Tenants in Common, including the case where Joint Tenancy has been severed the Land Registry must by law put an entry on the register, known as a **restriction**.

Purpose and effect of the registration

The purpose of the registration is to safeguard the rights of the people who may have an interest in the property but who are not themselves proprietors (such as those to whom property has been left by a proprietor who has died). The restriction makes it clear that there must generally be at least two people to share the responsibility of making sure that the money received on a sale or other dealing with the property is correctly dealt with.

Examples where a joint tenancy may be advantageous

1. Parties own jointly and want the survivor to automatically become sole owner without need for obtaining Grant of Probate.

Continued...

Contacts

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2. Unmarried couple – separate finances – unable to agree on terms for Wills but wanting to make sure that whatever happens the house goes to the survivor.

Examples where tenancy in common may be preferable

1. Parties wish to keep finances separate – eg a married couple who are getting divorced who wish to avoid the survivor automatically becoming the sole owner and wish to leave their share by Will.

2. Engaged couple – deposit coming from one set of parents wishing to have separate shares at least until they are married. We would also recommend that the couple sign a Declaration of Trust which sets out the contribution by the parents and the separate shares in the property.

3. Mother, son and daughter-in-law buy a house jointly – as between mother and her co-owners there would be a tenancy in common (ie so that the mother's share could pass on her death under her Will to all her children equally) even though the shares owned by the son and his wife could be held as joint tenants. Again we recommend that the different shares are detailed in a Declaration of Trust.

4. Elderly couple – who may need nursing home care and who want to safeguard all of the property passing to the survivor and being used for nursing home fees.



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