

# Co-ownership of land

## Your options explained



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As you are buying the property together, you will each be a co-owner. As co-owners, you can hold the property in one of two ways:

- As Joint Tenants; or
- As Tenants in Common

## Joint Tenants

Alex and Taylor



Alex and Taylor each own an undivided equal share of the property.

Alex passes away



Taylor

If one owner dies, and the ownership has remained as joint tenants, then the property will automatically pass to the surviving joint owner, regardless of the terms of the deceased's Will or wishes.

vs

## Tenants in Common

Alex and Taylor



Alex and Taylor each own a respective share in the property. This can be an equal share or unequal share (for example, if you are protecting any initial contributions towards the purchase).

Alex passes away



Alex's Estate

Taylor

If one owner dies, the surviving owner retains their share of the property and the deceased's share will form part of their estate to pass via any Will in place or the intestacy rules (if they do not have a Will in place).

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## Which Option is Best?

How you decide to own the property will ultimately depend on your circumstances when purchasing the property, together with your wishes as to who should benefit from your share in the property should you pass away. Careful consideration should be given when making this decision and we have provided some further guidance below to assist.

## Joint Tenants

If you hold the property as joint tenants, both of you will own the whole of the property. You will not each have a quantified share in the property and will not be able to leave a share of the property in your Will.

If you sell the property, or if you separate, it will be presumed that you both own the property equally, regardless of your respective contributions to the purchase price. On the death of one co-owner, their interest in the property would automatically pass to the remaining co-owner without any further action. The surviving co-owner would then own all of the property and on their death it would form part of their estate. This is known as the "right of survivorship".

Married couples or those in a civil partnership commonly use this method of co-ownership because the right of survivorship makes it straightforward to inherit each other's shares in the property however, there may be reasons not to become joint tenants. For example, if one of you has made a larger contribution to the purchase price of the property and you would want this to be recognised if the property is sold or if you separate.

Owning the property as joint tenants may also not be suitable if you have children from previous relationships and wish to protect your interest in the property to ultimately pass down to them, instead of automatically passing to the surviving owner. This is where careful estate planning should be considered to ensure your wishes are followed as there are ways in which this can be covered in your Will, whilst still providing some security for the surviving owner.

## Tenants in Common

If you own the property as tenants in common, each owner will have a specific share in the property that will not automatically pass to the surviving co-owner on death. You will need to consider whether each owners share in the property will be fixed from the outset (this could be equally (i.e. 50/50) or unequally (i.e. 70/30 split or simply protecting an initial contribution towards the initial purchase)) or whether the shares will vary according to ongoing unequal contributions towards the property during ownership.

If you decide that the ownership will be unequal, whether this is fixed from purchase or varying during ownership, then we would strongly advise that a Declaration of Trust be prepared to evidence the same. In reaching your decision, you should think about the following:

- **How you are purchasing the property?** If one owner is putting more in towards the initial deposit required to purchase the property, then this can be protected by way of Declaration of Trust to essentially protect this initial deposit before confirming how the balance on any sale would be divided. This initial contribution can be protected by a specific figure or on a percentage basis.
- **How are you intending to contribute towards the property following completion?** If you are obtaining a mortgage to assist with the purchase, you will need to consider whether you intend to contribute equally or unequally towards the same. This can then be reflected in a Declaration of Trust to ensure that your share of ownership in the property is reflective of the money each owner has contributed.
- **Do you intend to carry out any improvements or renovations to the property?** If yes, and one party will be contributing more than the other, then this too can be covered in a Declaration of Trust so that any additional funds invested into the property will be considered when working out the percentage split on any sale. This is a more complex Declaration of Trust and accurate record keeping of contributions would be required.

One thing to bear in mind if a simple Declaration of Trust is prepared on fixed shares is that should circumstances change, you will need to review the Deed to ensure that this is still fit for purpose. By holding the property as tenants in common, your respective shares in the property will pass via any Will you have in place, or the intestacy rules if you do not have a Will in place, should one owner pass away. This is a key difference to joint tenants and it could leave the surviving owner(s) in a vulnerable position whereby they may need to sell the property, or try re-mortgage, to buy the share of the property from the estate. For this reason, we would strongly recommend preparing a Will, or updating any current Will in place, to ensure that your wishes will be followed.

## The Right Election for Your Circumstances

It is essential that you make the right election for you. In the event that Land Registry are not advised as to whether you are holding the property as “joint tenants” or “tenants in common”, they will automatically register you as “tenants in common”. This will be recorded by way of a restriction being registered on the title but there is no further documentation to evidence the reasoning behind this which can then lead to complications later on.

## Next Steps

How you wish to hold the property must be your own decision, and is something that you should keep under review following the purchase of your property. If you decide to hold the property as joint tenants but then wish to split your interests, you can “sever” the joint tenancy and turn it into a tenancy in common at any time. It is also possible for tenants in common to become joint tenants at a later date by entering into a new declaration of trust, which you may wish to consider if you subsequently marry or enter into a civil partnership.

You should be aware that if you decide to hold the property as joint tenants:

- Either party can sever the joint tenancy without the other's agreement.
- The joint tenancy may be severed automatically in several situations, including where one party becomes bankrupt.

## Declaration of Trust

If you wish to hold the property as tenants in common in unequal shares, then we would strongly recommend that a Declaration of Trust is prepared to evidence this. That way, when you decide to sell the property, or if you separate/pass away, the Declaration of Trust can be referred to to ascertain each owner's respective entitlement to the property and its sale proceeds.

If this is something that you wish to discuss further, our Private Client Department will be more than happy to assist you in this regard and will be able to confirm the costs with you once they have confirmed your specific requirements.

Please confirm how you wish to proceed by signing and returning the Co-Ownership of Land form provided. We will then make the relevant referral to our Private Client team should you require any further assistance in terms of preparing a Declaration of Trust to evidence your ownership.