



Purchasing in joint names—client guide

This document provides general guidance regarding purchasing a property in joint names and should not be relied upon as legal advice. Your family lawyer will be able to provide specific advice based on your circumstances.

It is possible to own a property in three ways:

1. Sole name

If the property is owned by one party, then the other person has no legal right to live in there and no right to share of the sale proceeds. In the event of separation or death, the property legally belongs to the sole owner.

There are ways in which a non-legal owner can claim an interest so if you are cohabiting with another person and you wish to prevent them from being able to claim an interest in your property then you will need a [Cohabitation Agreement](#).

2. Joint tenants

If one owner dies, then the property will pass automatically to the surviving owner. Neither owner can leave their share in the property to anyone else in their Will. Any one owner can insist that the property be sold at any time. When the property is sold the net proceeds will always be divided equally. This method can sometimes be useful for inheritance tax reasons. This can be recorded in the Transfer Deed which the owners sign when purchasing the property.

A [Cohabitation Agreement](#) can include an option for one party to buy out the other's share. It can set out the method for valuing the property and what will happen to the mortgage and bills if one owner has moved out.

3. Tenants-in-common

Each person owns a distinct share in the property. The shares might be equal or unequal. For example, 50:50 or 60:40. When one owner dies their share forms part of their estate and can be left in their Will to whoever they wish. Any one owner can force a sale of the property at any time. If one owner has passed away, then the executor of the deceased's estate can force a sale at any time.

This can be recorded in the Transfer Deed which the owners sign when purchasing the property. This method of buying is useful where the parties contribute different amounts towards the purchase price.

A [Declaration of Trust](#) can include an option for one party to buy out the other's share. It can set out the method for valuing the property and payment of mortgage and bills. It can include a variation to the owner's parties' share in case they contribute unequally towards the mortgage or property work in the future.

A [Cohabitation Agreement](#) can go a step further and deal with other assets or finances.

Methods of Protection

1. The Transfer Deed (TR1 Form)

When you purchase the property, you will be asked to record whether you wish to hold the property solely, jointly as joint tenants or jointly as tenants-in-common.

However, if you are purchasing as a sole owner simply recording this in the Transfer Deed (TR1 Form) will not protect the property from potential claims from other people living there. You will need a Cohabitation Agreement for that.

Similarly, you can also record joint ownership in the Transfer Deed but without Declaration of Trust or a Cohabitation Agreement you cannot prevent the other party from forcing you to sell at any time because there is no automatic right for one party to buy you out the other. The property will always be held in the shares stated in the Transfer Deed even if one party contributes more/less later on.

This might be suitable for people who are purchasing a property strictly as an investment or purely for tax purposes. For those who are purchasing a property as a couple, a more comprehensive level of protection will be required.

2. Declaration of Trust

A Declaration of Trust sets who owns what percentage of the property. It can also cover some or all the additional things listed below:

- What costs will be paid from the sale proceeds before the money is divided and will those costs be divided equally or unequally,
- The right to buy one another out rather than sell the property and how the property would be valued,
- An obligation to share the mortgage repayments equally or unequally and what happens if one party fails to pay their share
- What if one party contributes more or less to the mortgage or towards property improvements.
- An obligation to keep the property in good repair and how those costs will be shared, and/or
- A condition that no one else can stay at the property unless it is agreed by both parties.

The Agreement will remain binding even if there is a change of circumstances. If something happens and the agreement no longer seems fair then the owners will need to agree to have the Declaration of Trust updated by a solicitor.

This level of protection is not suitable if the parties are engaged or married. A Nuptial Agreement will be required to protect the property in the event of divorce.

3. Cohabitation agreement

A Cohabitation Agreement can deal with more than one property. It can also deal with other financial arrangements including other assets and pensions. It can include obligation to provide financial support after separation for a partner or children. It can include occasions and events which might trigger a review of the Agreement such as marriage, children, a set number of years or written notice. This allows the agreement to be varied where there is a change of circumstances.

Despite calls for legislative reform, cohabiting couples have very few automatic financial rights and there is no such in law thing as a "common law spouse". Therefore, if you are in a cohabiting relationship with joint financial commitments or one party is financially depending on the other it is important to consider a Cohabitation Agreement.

Basic provisions:

- Who will pay mortgage or bills
- Who will contribute what to major works and to general repairs and improvements
- The operation of a joint current account and what each party will contribute
- A mechanism for settling any final direct debits and closing the joint account
- Whether there will be joint savings or investments and how those might be shared
- Will there will be credit cards or loans either jointly or in one parties' name but for which the other party is equally responsible
- Contents - who owned what before and what might be jointly purchased while living together and how those should be shared
- Triggering events for a review – marriage, children, a defined number of years, death and/or written notice. This allows the agreement to be varied where there is a change of circumstances.

More comprehensive provisions:

- Contributions and sharing of other assets such as investments or pensions
- Cars – purchased by both but registered in one parties' sole name
- Debts including car HP loan agreements
- Pets
- What provisions parties will make for the other in their wills, particularly important if you have lived together for two years or more
- Next of kin rights
- Nomination of beneficiaries in the event of death on life insurances and pensions
- Ongoing maintenance for other party (otherwise none)
- Arrangements and maintenance for children including school fees

This level of protection is not suitable if the parties are engaged or married. A Nuptial Agreement will be required to protect the property in the event of divorce.

4. Nuptial Agreement

On divorce there are particular sets of rules which apply and the court has the power to disregard prior agreements. The court can order one party to give the other party their jointly (or even solely owned) property. This can happen even where the parties recorded their shares in the Transfer deed, Declaration of Trust or in a Cohabitation Agreement.

If you want to protect a property after engagement, marriage or entering into a civil partnership then you must enter into a Nuptial Agreement. This type of agreement can deal not just with one property but could cover all the financial arrangements including other properties, assets and income as well as covering future changes in circumstance.

It is still possible to have agreement after the marriage or civil partnership. This is called a Post-Nuptial Agreement.

Talk to us

Buying property is one of the biggest financial transactions you undertake in your lifetime. It therefore makes sense to take advice from a professional adviser.

Living with someone for a certain period of time, getting married or entering into a civil partnership doesn't mean you are automatically entitled to share a property or keep a property after you split up.

This means that sorting out disputes about property without an agreement can be expensive and take a long time. A good Cohabitation Agreement or Nuptial Agreement can mean that areas of potential dispute on separation are reduced or eliminated. This will make the separation cheaper and quicker.

Many couples also find the process of making an agreement means that they have the chance to think and talk about how living together is going to work financially, meaning that arguments about money are less likely later on.

Here at Thackray Williams, we help clients navigate their way through the process.

We assist first time buyers to make sure they secure the monies they (or in some cases their parents) have contributed to the purchase.

We advise investors and business owners purchasing buy-to-lets, holiday homes or commercial premises, about the best way to buy the property in consideration of their own Income tax and Inheritance tax positions.

Ultimately, we help families plan for the future.

Talk to a member of our Family Department today on 0208 290 0440 or email info@thackraywilliams.com.