



## Specialist Will Drafters & Estate Planners

A property is often the major asset owned by an individual or a 'couple'. Whilst care should be taken not to use it purely as an object of Estate Planning, certain steps might be considered by most couples (married, cohabiting or in a civil partnership).

### **Joint ownership**

There are two ways in which a property may be jointly owned by two or more persons:

### **Joint Tenants**

This is the arrangement most often used by 'couples' as it does mean an easy transfer of property to the survivor when one partner dies.

Holding a property as joint tenants means that on the death of one spouse (or partner) his or her interest in the property immediately and automatically passes to the surviving spouse or partner regardless of how long they survive you by, i.e. accrues by survivorship. This cannot be prevented by anything said about the property in the Will.

All the surviving joint owner needs to prove absolute ownership of the property is the death certificate of his/her spouse or partner.

A benefit of joint tenancy is that it can avoid the need to obtain a grant of representation (Probate) on the death of the first joint tenant to die.

For the purpose of Inheritance Tax (IHT), if the survivor is a spouse or civil partner the interest in the property is IHT exempt on first death. If the combined value of a husband and wife's (or civil partner's) assets (including the house) is greater than the nil-rate band, consideration might be given to owning the home as tenants-in-common.

### **Tenants in Common**

Property owned under a tenancy in common passes by Will or on Intestacy (where there is no Will), and not automatically to the surviving co-owner. A tenancy in common allows the first spouse or partner to die to leave his or her share away from the survivor. The effect could be shared ownership between the surviving spouse or partner and children/step children or other relative(s). If the gift is made absolutely (without condition) it is possible that the child or other beneficiary may want the house sold to realise the inheritance. This can be overcome by using a Will Trust.

Careful consideration needs to be made when deciding to sever a joint tenancy and how the estate will be distributed on first death to protect the surviving spouse or partner and preserve the estate in an appropriate and practical manner.

Sometimes granting a life interest is the best way of protecting the surviving spouse or partner from the possibility of losing the right to live in the matrimonial home.



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