

# Joint Ownership Guide and Instructions Form

What you need to know | The choices | Your decision

## Unmarried?

If you are not married, it is very important to legally agree now whether you each own half the property, or some other proportion, especially if either of you have children.

What you agree now may well decide what happens to the property, and the division of the money, if either of you want to sell the property, or if one of you dies.

## Married?

If you are married (or in a civil partnership) and your relationship breaks down, then the family law courts have power to decide what should happen to the property, and their decision might over-rule any decision you make now.

However it is still important to consider what shares you hold in the property now, as the decision will affect what happens should one of you die. There could also be important Inheritance Tax consequences to think about.

## Business Property?

If you are buying the property as business partners, as an investment, or a buy-to-let property, then it is vital that you agree the proportions of your shares in the property, and what will happen if one, or both of you, want to sell it.

You will probably want to hold it as Owners in Shares, and have a formal Partnership Agreement or Trust Deed prepared. This will set out the way in which the property will be owned and managed.

## Make a Will!

All property owners should make a will to say what happens to the property if they die, even Joint Owners. Couples who are Owners in Shares might make mutual wills, giving the survivor the right to live in the property, for example, even though ultimately each of their shares will go their respective children or families.

Because property prices have risen dramatically, many people will face the 40% Inheritance Tax that applies to estates over £325,000. You should obtain tax advice at the same time as making a will, to see if you can minimise the tax payable by taking advantage of available reliefs.



## Why this is important

You are planning to buy a property together. This guide explains the two ways in which property can be held by people jointly - **'Joint Owners'** or **'Owners in Shares'**. You will need to read this guide carefully, and tell us which way you want to hold the property, so that we can note your decision on the legal title when we register your purchase at Land Registry. **Note that a maximum of 4 people can jointly be the legal owners of land.** If there are more than 4 people contributing to the purchase, then between 2 and 4 of them must be appointed as trustees to hold the land on trust for all of them. They should also have a Trust Deed prepared, setting out the rights and obligations of all the owners.

You might have contributed the same or different amounts of money to the purchase. You might want to own the property in shares in the same proportion as your contributions. You might want to own it in equal shares, and provide that if one of you dies, that share goes to the other owner. Alternatively you might want to provide that your share goes to your children instead. There may also be Inheritance Tax issues to think about. Please discuss this with us, and we can suggest what is right for you.

## 'Joint Owners' or 'Owners in Shares'?

You can own property jointly as 'Joint Owners' (the legal term is 'Joint Tenants') or as 'Owners in Shares' (the legal term is 'Tenants in Common').

The legal terms can be confusing (and have nothing to do with leases or tenancy agreements), so this note we will use the terms **'Joint Owners'** or **'Owners in Shares'**, which are more understandable.

## 'Joint Owners'

If you own property jointly with another person as Joint Owners it means that you each have equal shares in the property, regardless of how much money each of you originally put in to buy the property.

If one of you dies, then that person's share in the property automatically goes to the other owner(s) - regardless of what it might say in the deceased's will about the property. This applies to married or unmarried couples that are joint owners. You can sever the joint ownership if, for example, your relationship breaks down, but you should get legal advice before you do this.





## John & Mary

John and Mary are an unmarried couple who have children from previous relationships.

John is putting in £200,000

Mary is putting in £100,000

The house is to be in their joint names.

They may decide to own the house as Joint Owners. In that case, if John dies first, his share will go to Mary, not to John's children. If Mary then dies, all of the house will normally go to Mary's children. Of course Mary may leave part of the house in her will to John's children, but she might change her mind after John's death.

Alternatively, they may decide to buy the house as Owners in Shares, with a 2/3rd share to John and 1/3rd share to Mary. Then each of their shares will be protected for their families to inherit, if they want that to happen.

They may consider making a Trust Deed and mutual wills allowing the other party to live in the house until the survivor dies, remarries, or moves out, and only then will the shares be divided up between their families.

## Life Insurance?

You might need to think about taking out life insurance to pay off any outstanding mortgage should one of you die, so that the survivor can continue to live in the property.

## Can't agree?

If you have difficulty agreeing, or if one of you feels under pressure to agree, you should think very carefully about whether you want to buy the property together at all.

If either of you wants advice on your personal position separately from your partner, or if you need help in resolving your disagreements with each other, you will both need to be separately advised. Your conveyancer will be able to suggest an adviser who can help.

## Severing a Joint Ownership

You can change from being 'Joint Owners' to 'Owners in Shares' by 'Severing the Joint Ownership'. This is a legal phrase that refers to what happens when you give the other owner of the property a written notice saying that you 'Sever the Joint Ownership'. From the moment you serve the notice on the other party, the property will be held by you as Owners in Shares in equal shares, regardless of how much you each contributed to the purchase of the property.

You do not need the agreement of the other owner to 'Sever the Joint Ownership' of the property. Normally, all you need to do is give them the Notice of Severance. Bankruptcy and various other situations will also automatically sever the joint ownership, and you will then be 'Owners in Shares'.

## 'Owners in Shares'

If you are 'Owners in Shares' you can agree in a Trust Deed what your shares are, say 70%-30% or 50%-50%, or any other proportion you agree. The shares might represent how much you each put in to the house purchase, for example.

You can also vary the shares later by agreement too, if your circumstances change. The **Trust Deed** could even say that the proportions of each share could change if, for example, if one of you carries out improvements to the property, or pays off some of the mortgage on the property.

You should also think about what will happen if one of you dies. If that happens, and you are Owners in Shares, the deceased's share will not go automatically to the other owner(s) of the property, but will go in accordance with their will. If they haven't made a will, then their share will go to their family.

An unmarried couple will have no automatic right to their deceased's co-owner's share, regardless of how long they have lived together, or whether they have had children together. Such couples should have a Trust Deed setting out whether the survivor will have a right to stay in the house, or whether it has to be sold immediately, or whether one party can buy out the other's share.

## How to choose which option is right for you

We will have to discuss your circumstances with you carefully before you make a decision, but the following points may be helpful:

### Joint Owners

You might choose this option if you are both happy that:

- You have equal shares in the property;
- Your share will go to the other owner(s) automatically if you die. Your share will not go to your children, or other members of your family, or friends, despite what you might have said in your will;
- You accept that the other owner can convert the Joint Ownership of the property to Ownership in Shares at any time, and that this may happen automatically in some cases, and that you would then own the property in equal shares. You could only change the proportions if the other owner agrees to a Trust Deed when the severance happens.

### Owners in Shares

You might choose this option if you are both happy that:

- You have unequal shares in the property; or
- Your share will not automatically go to the other owner if you die. You could still agree now to make mutual wills to leave your shares to each other, but you could change this at any time;
- You want your shares to go to the members of your respective families, if either of you die. However, the other joint owner might be allowed to live in the property until they die, or they want to sell it;
- The other owner has financial difficulties, and you have put in more than half to buy the property. If you own as Joint Owners and they become bankrupt, their creditors will take half the value in the property;
- You want to provide for any of the possible issues mentioned in this guide in a separate Trust Deed, that we can prepare for you.



### Sue & Steve

Sue and Steve are an unmarried couple who bought a house for £400,000 ten years ago.

Sue put in £200,000  
Steve put in £100,000  
The mortgage was £100,000

They didn't want to think about the way in which the house was to be held jointly. As a result it was owned by them as Joint Owners by default.

Soon after buying the property they decided to start a family and had two children. However, the relationship broke down. Steve left the house, and bought another house with his new partner. Sue stayed in the house and paid all the bills. Neither of them took legal advice.

Steve eventually wanted to take his share out of the house, but Sue refused to sell. The court decided that Steve was only entitled to 10% of the value of the house. Had Steve taken legal advice when he moved out, and agreed with Sue to convert the ownership to 2/3 and 1/3 Owners in Shares, he might have kept his original share.

### Trust Deed? Wills?

Where you decide to be 'Owners in Shares', you should ask us to prepare a 'Trust Deed'. It is usually a good idea to have us prepare Wills for you at the same time. These might deal with what happens if, for example:

- One of you wants to sell the house - can they force a sale?
- Who can live at the house? Can your co-owner invite friends to stay?
- Does one of you have the right to buy out the other's share, and if so how will this work in practice?
- What happens if one of you leaves the property? Does the remaining owner have to pay any rent to the owner who left?
- Who is responsible for paying for repairs, maintenance, insurance, the mortgage payments, fuel bills or other outgoings - are they paid 50:50, or are they paid in proportion to your shares in the property?
- Negative Equity. If, for any reason, the property has to be sold for less than the amount outstanding on the mortgage, then the bank can pursue either or both of you for the full amount of any shortfall. You are each liable for the whole of the debt to the bank. If the bank chose to pursue just one of you for all the debt, then that person would have to claim a share off the other owner. If this happens, do you agree that the debts relating to the house should be shared in the same proportion as your respective shares in the property?

Do **not** try to cut corners by trying to prepare a **Trust Deed** or **Wills** yourself. The consequences of a badly prepared Trust Deed or Will can be catastrophic, and often result in very expensive litigation. It is better to have an expert prepare these for you. There will usually be an extra charge for a trust deed and wills, of course. Our fees will depend on how complex your situation is.

### What if we are married or in a civil partnership?

The majority of married couples (or civil partners) choose to be **Joint Owners**, as they will usually want the survivor to own all of the property. Also, it is usually not essential that they define their shares, because the court has wide powers to divide the property of such couples that split up, but then can't agree what should happen to their property.

However, there are some situations where a married couple (or civil partners) might not choose to be Joint Owners, so please discuss your situation with us. We can then suggest ways of dealing with your circumstances in a way that is satisfactory to both of you.

### Your instructions to us on joint ownership

Address of Property: ..... Conveyancer's reference: .....

We have each read this Guide, and understand the difference between the two kinds of joint ownership of property

We have decided that we wish to own the property in the way we have shown below

We have both/all given our names, signed and dated the section overleaf to confirm this as our joint decision

- Joint Owners, OR:
- Owners in Shares - in EQUAL shares, OR:
- Owners in Shares - in unequal shares, as below (these must add up to 100%)

..... % to be held by (FULL NAMES) .....

..... % to be held by (FULL NAMES) .....

..... % to be held by (FULL NAMES) .....

..... % to be held by (FULL NAMES) .....

We want you to prepare a Trust Deed setting out how we will own our shares as Owners in Shares





### Cheryl & James

Cheryl put in 90% of the money for their new house, as she inherited some money from her dad. They didn't want to think about how their property was to be jointly held, as it seemed un-romantic. The property was owned by them as Joint Owners by default.

They started a family, and had three children. Tragedy struck the family when Cheryl passed away following a car accident. The three young children went to live with Cheryl's mum.

Since they owned the house as Joint Owners by default, her share in the property automatically went to James, and nothing went to the children. James remarried, sold the house, moved away and started a new family.

Had Cheryl and James originally agreed the property was to be bought in shares of 90% - 10% as Owners in Shares, then Cheryl's share would have gone to her children automatically, or in accordance with the Trust Deed, and her will.

### Children from a previous relationship?

Whether you are married or not, you may have had children with a previous partner, and you may wish to leave your share in the property to those children if you die, rather than allow your share pass to your co-owner.

To do this, you would need to be **Owners in Shares**, with a **Trust Deed** and a **will** setting out what happens to the shares. The Trust Deed might say that the property is then sold and the proceeds are divided in agreed proportions.

Alternatively, it might say that the survivor will have the right to live in the property until their death, and that the property will then be sold, with the proceeds split between each party's children in the agreed proportions.

### Parents' contributions? Living with a relative?

If either of your parents, or another relative, is putting money in to the purchase, or planning to live at the property, or wants to own a share in the property, it is sensible for your relative's rights to be set out in a Trust Deed now. This should help prevent future misunderstanding or disputes. Your relative (for example, a widowed mother) should receive independent advice.

Likely points to be considered will be the nature of their right to occupy the property, and whether their consent would be needed to any sale. We can prepare a Trust Deed for you that will deal with these points.

**This is a general guide only. Each situation may be different, and may need specific advice. If you have any questions about anything contained in this guide, please discuss the matter with your conveyancer.**

### How to complete this form:

- Fill in the form at the bottom of page 3,
- Choose 'Joint Owners' or 'Owners in Shares',
- If you choose 'Owners in Shares', insert the percentages of each share, and make sure they add up to 100%,
- All owners must complete and sign the panel below,
- Detach the panel on the dotted line and send back to us,
- If you have other queries call us, write us a letter, or email us. We can then advise you what is best for your situation,
- Keep the rest of the form for future reference.



Each client must write in their name in capitals in the box below	Each client must sign their signature in the box below	Date Day/month/year
1.....		...../...../.....
2.....		...../...../.....
3.....		...../...../.....
4.....		...../...../.....

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