# Joint property ownership - England

You must decide which type of joint ownership you want when you purchase, inherit, or become a trustee of a property with someone else. HM Land Registry also need to be informed.

The same considerations arise when forming a permanent relationship with someone, marrying, or becoming civil partners where property is in the mix. That assumes that you do not see the benefit in continued sole ownership of property.

The more important question is perhaps “when” does it matter? There are several key moments in the process of owning a property with another person when it will make a big difference how the property is legally owned.

This becomes more important when there might have been previous relationships and children from the previous relationship(s). In such situations the concern to safeguard the interests of the children by their birth parent can be paramount. Likewise, in later life the form of joint ownership might be linked to Will strategies or as a safeguard to protect equity in the home from being seriously eroded to self-fund care by a survivor.

There are two forms of joint property ownership: -

- ‘Joint Tenants’
- ‘Tenants in Common’

It is important to weigh up the pros and cons. Consider seeking professional financial and or legal advice mindful of the implications including Inheritance Tax planning and funding of care in later life.

It might well be that the two forms of ownership were not fully explained or understood at the time of acquisition of the property many years ago. What might have been right at that point in time might not be appropriate now given changes in relationships, personal circumstances, taxation, self-funding of care requirements and any other relevant factors. It pays to review and establish if the current basis of ownership is still the most appropriate.

## Joint tenants

As Joint Tenants (sometimes called ‘Beneficial Joint Tenants’): -

- each person has equal rights to the whole property
- the property automatically passes to the other owners (Joint Tenants) if you die before them
    - offers ‘peace of mind’ for the surviving spouse, civil partner, or partner as a Joint Tenant
- it could potentially disinherit your own children if the survivor then remarries / forms a civil partnership and then forms a Joint Tenancy with another person then pre-deceasing their second spouse, civil partner, or partner
- you cannot pass on your ownership of the property in your Will

## Tenants in common

As Tenants in Common: -

- you can own different shares of the property
    - this could reflect the different preceding home equity beforehand and other assets brought into the relationship with the acquisition of a joint home
    - it need not just be a straight 50:50 split so protecting their share in case they split up
    - a smaller ownership share does not mean limited rights to the property. For example, someone may own just 20% of the property as a Tenant in Common but will still have a right to access all of it
- the property does not automatically pass to the other owners (Tenants in Common) if you die it passes on through your Will to your beneficiaries
    - this offers some control over your intentions beyond the grave and can safeguard your children's future inheritance

In some circumstances it might be appropriate to draw up a Deed of Trust. This document is not required by law but is necessary for co-owners who want to ensure transparency when it comes to property ownership. It will also be crucial if the relationship between the property owners breaks down. A Deed of Trust (also called a Declaration of Trust) will set out the financial interests and responsibilities that each party has in the property.

With Tenants in Common one member of a couple can pass on their share of the home on death, say to their children, while the survivor can continue to live there, passing on their share on their death.

Tenants in Common can also prevent or delay having to sell your home as well as safeguarding value if you need to go into long-term care, if you are the survivor, given that part of the home is not owned by the person needing that care.

The use of Tenants in Common arrangements by couples grew as a way of minimising Inheritance Tax liability. This enabled them to pass on the value of their home in two stages, with each member of the couple benefiting from their individual Inheritance Tax allowance in turn as they apply at the time of death.

But in 2007, then Chancellor Alistair Darling announced that married couples and civil partners would be able to transfer their unused Inheritance Tax allowance to each other, removing the need for them to use Tenants in Common arrangements. The Inheritance Tax Allowance being deemed to be unused or only partially used if the surviving spouse or civil partner inherited the Entire Estate or a proportion.

The changes to Inheritance Tax meant that with immediate effect married couples and civil partners could pass on their individual Inheritance Tax allowance on death, currently potentially £325,000 each- creating the ability to bequeath up to £650,000 tax-free.

However, the rules do not apply to unmarried cohabiting couples or relatives living together.

Later an additional Inheritance Tax Allowance was introduced amounting to a further £350,000 for a couple potentially linked to the value of the main residence inherited by direct descendants. For a married couple or civil partners, it means than a combined Estate of no more than £1m, with no gifts to add back into the calculation of any Inheritance Tax liability, would be free of Inheritance Tax on the second death.

Other joint owners can still benefit from Tenants in Common.

By splitting ownership of the home, the proportion belonging to the first spouse or partner to die could be passed straight onto their own children or any designated beneficiary so protecting their situation should the surviving spouse or partner later marry or enter into a civil partnership otherwise potentially putting at risk that intended inheritance. Each person's Inheritance Tax Allowance is set at the time of their death not rolled over.

## Changing your type of ownership

You can change from being either: -

- Joint Tenants to Tenants in Common
    - for example, if you divorce or separate and want to leave your share of the property to someone else
- Tenants in Common to Joint Tenants
    - for example, if you marry or become civil partners and want to have equal rights to the whole property

You can also change from Sole Ownership to Tenants in Common or Joint Tenants, for example, if you want to add your partner as joint owner. This is called transferring ownership. If not married or civil partners there could be Capital Gains and Inheritance Tax implication to consider with such transfer of value.

A married couple or civil partners might have adopted a Tenants in Common approach at outset but after many happy years together might then think it is better to switch to Joint Tenancy so offering greater security to the survivor.

Do not forget to review your Will and ensure that the provisions in your Wills do not conflict in any way with your intentions. Best to do so simultaneously when making any such change to the basis of ownership of the property.

With the changed Inheritance Tax Allowances and the current basis of self-funding care, although subject to current debate and hopefully long overdue resolution, is it appropriate to review what was done before and now do something different?

Also, remember that later in life several years of self-funding care, typically for the survivor, can seriously deplete an Estate. So, at some point in time there is an interplay between minimising Inheritance Tax and maximising an inheritable Estate left after self-funding care has whittled it down in value. Therefore, do not set things in stone never to change. Adapt as circumstances change.

## Change from Joint Tenants to Tenants in Common

This is called ‘severance of joint tenancy’. You should apply for a ‘Form A restriction’.

This can be done without the other owners’ agreement.

A solicitor, conveyancer or legal executive can make the application for you. On the other hand, you might do this on your own and the process to follow is set out here https://www.gov.uk/joint-property-ownership/change-from-joint-tenants-to-tenants-in-common

If the other owners do not agree then a different procedure needs to be followed and that is set out on that website too.

There is no HM Land Registry fee.

## Change from Tenants in Common to Joint Tenants

Agreement is needed of all the other joint owners to change from being Tenants in Common to Joint Tenants.

A solicitor, conveyancer or legal executive can also make the application to do so.

The process is different to that set out above and is set out here https://www.gov.uk/joint-property-ownership/change-from-tenants-in-common-to-joint-tenants

There is no HM Land Registry fee.

*Source: www.gov.uk*