

Jointly Held Property

Introduction

On the purchase or transfer of any property by two or more persons, not being purchased by a trust, it is necessary to decide on how the property is to be held by them. There are two alternatives. First as "*joint tenants*" and secondly as "*tenants in common*". Do not be over concerned at these technical phrases, but the decision is important as the manner in which the property is to be held dictates what will happen in the event that one or more of the owners dies.

Joint Tenants

A "**joint tenancy**" means that on the death of one of the owners the property *automatically* belongs in its entirety to the survivor or survivors. In many cases this is exactly what the parties would wish to happen. However there are exceptions to this, even in the case of a husband and wife, particularly in the instance of a second marriage or relationship where a party would like other family members to become the owner of a share in the property in the event of his or her death. There is also a special legal presumption that if two owners die at the same time (or if there is no indication of the order of the deaths) the older of the two is deemed to have died first. In this event the property would then pass

into the name of the younger of the parties and then under his or her estate.

Tenants in Common

2. A "**tenancy in common**" means that the parties will each own a distinct share in the property. It is usually on the basis of an equal share but this need not be the case and unequal shares can be decided upon. In the event of the death of one of the parties that person's interest in the property will pass either in accordance with their will or if there is no will in accordance with the general law or intestate succession e.g. back to their family.

Declaration of Trust

Depending on your circumstances, it might also be advisable for there to be a Deed called a Declaration of Trust which could provide, amongst other things, for a surviving owner to have the right to remain in the property even after the death of one of the parties so that the property does not have to be sold until that person does not require it as a residence.

If you are in any doubt on the subject, please discuss the matter with us in order that you can make an informed decision.

Please call Jonathan Hudson on 01233 625711 for more information, or email them on jdh@hallettandco.co.uk.

