Joint Legal Ownership of the Property: Factsheet

When more than one person buys a Property, the buyers need to elect how they wish to hold the beneficial interest in the Property. There are 2 ways that the Property can be held, as "Beneficial Joint Tenants" or as "Tenants in Common".

What does Beneficial Joint Tenants mean?

If you elect to hold the Property as Beneficial Joint Tenants, you will jointly own 100% of the Property in equal shares. On the death of one of the owners, the remaining owner will by default own 100% of the Property (if more than 1 owner remains, the remaining owners will jointly own 100% of the Property in equal shares). For the avoidance of doubt, the share in the Property owned by the deceased has automatically passed to the survivor(s) and does not form part of the deceased's estate.

What does Tenants in Common mean?

If you elect to hold the property as Tenants in Common, you will still own the property together, however each person will hold a separate and distinct proportion of the Property. This can still be held in equal shares (50% - 50% if there are 2 of you) or can be held in unequal shares the proportion of which the owners have to agree.
On the death of one of the owners, unlike Beneficial Joint Tenants that owner's share would **not** automatically pass to the survivor(s). The deceased's share would be dealt with either by the deceased's will or by the intestacy rules if a will does not exist.

Which option is right for us?

Much will depend on your personal circumstances. Most married couples choose to hold as Beneficial Joint Tenants. However, some married couples may choose to hold as Tenants in Common in certain circumstances.
Careful consideration should be given by you as to your particular situation and you may wish to consider holding as Tenants in Common if any of the following apply (this is not an exhaustive list):-

- You are not married
- You are putting in unequal proportions of money towards the purchase price
- You will be paying unequal proportions of monies towards any mortgage repayments or property improvements or household bills
- You have previously been married/divorced and/or have children from previous relationships
- You have a high net worth and need inheritance tax advice
- Someone else has an interest in the Property that will not be named on the deeds
- You have other tax, business or benefit considerations

If one or more of the above applies to you or there are other considerations that affect the position, then you may wish to hold the Property as Tenants in Common in equal or unequal shares.

If you wish to hold the property as Tenants in Common in unequal shares, you will need to enter into a Declaration of Trust with your co-owner(s) to reflect your agreement as to the .

share in the Property that you will each own. Please note that an additional fee will apply to draft this document as set out in the Additional Fees Factsheet in our Client Care pack provided at the start of the transaction.

What is a Declaration of Trust?

A Declaration of Trust is a legal document which sets out the financial arrangements between two or more people buying a property and/or those with an interest in a property. If you are holding the Property in unequal shares (or on trust for a third party) a Declaration of Trust can be drawn up tailored to your requirements:-

How could the Declaration of Trust be drafted to reflect my requirements?

There are several ways that the parties may wish to protect their respective interests.
The Declaration of Trust will state that when a property is sold, the sale proceeds will firstly be used to repay any mortgage(s) and pay any legal and estate agency fees. The remaining monies (if any) are called "the Net Proceeds of Sale" and will be distributed in accordance with the provisions of the Declaration of Trust.
To give you an illustration of some of the options available when drawing up the Declaration of Trust:-

Example Scenario:-

- Party A and Party B purchase a Property together for a purchase price of £200,000;
- They get a mortgage from the bank of £100,000;
- Party A is putting in £80,000 towards the balance of the purchase price
- Party B is putting in £20,000 towards the balance of the purchase price

3 years later:-

- the Property is sold for £250,000
- the outstanding mortgage, legal fees and estate agency fees when the Property is sold combined amount to £90,000
- **The Net Proceeds of Sale ("NPS") figure is therefore £160,000**

Option 1

If the intention when drawing up the Declaration of Trust is for Party A to pay 80% and Party B to pay 20% (the same proportions as their contributions to the original purchase price) towards any mortgage repayments or property improvements or household bills during their ownership

Then the Declaration of Trust could say that the NPS are to be split as follows:-

Party A – 80%
Party B – 20%

In this example:-

Party A will receive - £128,000
Party B will receive - £32,000 .

Option 2
If the intention when drawing up the Declaration of Trust is for Party A and Party B to each pay 50% towards any mortgage repayments or property improvements or household bills during their ownership

Then the Declaration of Trust could say that the NPS are to be split as follows:-

Firstly:-

Party A – £80,000
Party B – £20,000

Any remaining funds (£60,000) to be split 50% - 50% (£30,000 - £30,000)

In this example:-

Party A will receive - £110,000
Party B will receive - £50,000

Option 3

If the intention when drawing up the Declaration of Trust is for Party A and Party B to each pay 50% towards any mortgage repayments or property improvements or household bills during their ownership BUT the parties agree that their respective initial contributions should grow with the value of the Property

Initial purchase price - £200,000

Party A - £80,000 of £200,000 = 40%
Party B - £20,000 of £200,000 = 10%

Then the Declaration of Trust could say that the NPS are to be split as follows:-

Sale Price - £250,000

Firstly:-

Party A – £100,000 (40% of £250,000)
Party B – £25,000 (10% of £250,000)
Any remaining funds (£35,000) to be split 50% - 50% (£17,500 - £17,500)

In this example:-

Party A will receive - £117,500
Party B will receive - £42,500

The above options are not exhaustive and there may be other considerations that you may wish to take into account and reflect in the Declaration of Trust. Please note that we are not able to advise you as individuals in respect of the Declaration of Trust as you are both/all our clients this would be a conflict of interests. Should you require clarification as to how to protect your interests as an individual, please seek independent legal advice.