

Jointly Owned Property

If you are involved in owning a property jointly with someone else you need to make informed decisions about what will happen when the property is sold or if things go wrong: one of you might die, move away or the relationship breaks down.

In the case of property disputes between a husband and wife, the Family Court has wide powers to sort out the consequences of divorce or separation. No agreement made in advance can override those powers.

For an unmarried couple there is no such safety net. The so-called common law wife or husband has no special rights. This is why it is important for you to decide at the beginning how your property should be dealt with if your relationship breaks down or one of you should die.

Property can be owned jointly in two ways. It is important to decide which is appropriate for you. The choices are:

(A) Joint Tenancy

(B) Tenancy in Common

(A) **Joint Tenancy** - The property passes automatically to the survivor on the death of the first co-owner without any formalities. **REMEMBER** - your Will has no effect in respect of property held in this way.

(B) **Tenancy in Common** - If you want to define the share of ownership in your property then this is the method to use. A trust deed (are often called a Declaration of Trust) will set out the agreed division and when the property is sold the net proceeds will be split in those shares. You can leave your share to whoever you wish in your will. There are ways of ensuring that your partner does not have to sell the property against his or her wishes. We strongly advise you to make a new Will if you choose tenancy in common. Our Wills and Trusts Department, headed by Martin Troy, can deal with both Wills and the Declaration of Trust. Contact – martintroy@millerparris.co.uk.

Please note that in respect of the Declaration of Trust we would need to ensure that no conflict of interest arises (usually where one party is contributing more to the overall cost of the purchase than the other). It is likely therefore that we can only act for one of you in respect of the Declaration of Trust.

In the event of a relationship breakdown a joint tenancy can be changed to a tenancy in common. If you cannot agree on how the sale proceeds should be divided, a Court would look at the contributions made by each of you at the time of the purchase and subsequently towards the upkeep of the property to decide upon a fair division.

On death, the type of ownership can be critical for tax, succession and asset protection reasons. It is important to review your existing Will (if you have one) or consider making a new one.