

Residential Property

Joint ownership

There are two ways of holding property jointly with another person - joint tenants and tenants in common.

Joint tenants

When a couple who are holding the property as joint tenants separate in some way, neither of them is able to sell the property without the other being a party to the contract.

Should one of the parties die, his or her interest in the property will pass automatically to the surviving party regardless of the provisions of the deceased's will.

We are sure that you will appreciate, however, that it is the wish of most couples, whether married or not, that in the event of a death the house should pass automatically and without problems to the survivor, whose home it will be at the time. Most couples therefore elect to purchase their main home as joint tenants.

If the survivor re-marries he or she may transfer the house into the joint names of himself/herself and his/her new-spouse.

If they in turn hold the house as joint tenants it is possible that any children of the first marriage may be left without any claim to an interest in the house or the proceeds of its sale.

If you are concerned about this, either now or in the future, you should seek our advice.

Tenants in common

The alternative is to hold the property as tenants in common. If the parties separate, again they are unable to sell the property without both of them being parties to the contract.

In this case on death the interest of the deceased will not pass automatically to the survivor and the survivor will not be able to sell unless another trustee is appointed. In the absence of special provision, it is the survivor who appoints the new trustee.

Should one of the parties die then his or her share will pass in accordance with the terms of his or her will or if there is no will in accordance with the Rules of Intestacy i.e., to their next of kin. We will be pleased to explain this further if this will assist. If you decide to hold the property as tenants in common you will need to discuss and decide in what proportion the property will be held.



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General comments

If property is held as joint tenants either party may convert the joint tenancy into tenants in common by completing a simple document. You should seek legal advice if you wish to do this in the future.

We realise that considering your own death is not something that automatically springs to mind as you purchase a property, but unfortunately with changes in the law and the status of marriage at the present time, it is necessary for you to give these matters your consideration.

In view of the above we strongly recommend that you make a will, if you have not already done so or update any wills previously made.

The way in which property is held can have significant tax implications on death if you have substantial investments or other assets and you die within a short time of each other. If you are concerned about the tax implications of the way in which you wish to hold the property then you should take legal advice.

If you require further advice in this regard, then please contact Karen du Rocher at karen@hatten-wyatt.com.

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