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Buyer Ownership of Land Form

The purchase of a property involves the investment of significant sums of money. The difference between the value of a property and the amount outstanding on any mortgages is known as the equity in a property, and this would be expected to increase over time. When a property is sold, this equity is realised and distributed.

Where you are purchasing with another person it is vital that you consider how this equity will be shared between you and this document will set out your options. It is vital that you read this carefully and consider your respective positions fully.

At the end of this form you will be asked to make a choice as to how this equity will be dealt with in the future. You can change this decision at any point up until completion. If you are unsure of anything then please contact us.

Properties owned by more than two people can be held in one of two ways; either Joint Tenants or Tenants in Common, and the easiest way to explain the difference between the two is by explaining what happens when one owner dies.

It is possible to change between the two methods throughout your ownership of the property. You should take legal advice at that time before doing so.

Joint Tenants

Where a property is held as joint tenants, all owners are entitled to all of the property and have no distinct shares. This means that if one owner dies, their share would automatically pass to the remaining owners. The deceased owner's share could not be left to anyone under their Will.

Most married couples will choose to hold the property as Joint Tenants. In the event that a marriage or civil partnership breaks down, the Courts have a wide discretion to assign shares of the equity to either party as part of the divorce proceedings, regardless of the choice made at this stage.

Unmarried Couples

The position is very different for unmarried couples that purchase property jointly. There is no 'common law' marriage and unmarried couples should take legal advice from a family lawyer before purchasing a property.

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Unmarried couples who purchase as joint tenants need to be aware that, should the relationship end and the split of equity disputed, there are no guarantees as to what the Court will decide.

The starting position is that the equity will be split equally, however the Court will look at the conduct of the parties both before and after the purchase for a common intention as to the split of funds. They can then distribute the equity based on that common intention.

If the Court decides that the intentions have changed, but cannot deduce what the actual intentions were, they are entitled to split the equity based on what they consider fair and will consider all dealings between the couple.

This is a complex area of law and, as it stands, nearly impossible to predict with any certainty. Each case will be different. Whilst it is unpleasant to consider, you should discuss what would happen if the relationship breaks down and what you would seek to recover from the equity. These intentions can then be expressly set out, for clarity and piece of mind, in a declaration of trust.

Even if the equity is shared equally, this may not reflect the financial contributions at purchase, as set out in the example below.

John Smith and Mary Jones decide to live together. They purchase 1 Acacia Avenue for £200,000.00. John contributes £50,000.00 of his savings, Mary £25,000.00 from hers and the balance of £125,000.00 they take out on a mortgage. 3 years later they decide to separate and the house is sold this time for £225,000.00. The sale proceeds are divided as follows:-

Sale Price:	£225,000.00
Less: Mortgage outstanding - say	£125,000.00
Balance	£100,000.00

John's Share:	£50,000.00	
Mary's Share:	£50,000.00	£100,000.00

Example 1

If you are an unmarried couple, or not in a relationship with your co-owners at all, you may consider that it is more appropriate to hold the property as tenants in common.

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Tenants in Common

The alternative way of holding a property is to hold the property as tenants in common. This means that each owner has a distinct share in the property. Should an owner die, their share will pass in accordance with their Will or under Intestacy Laws (if there is no Will).

Tenants in common can hold the property in equal or unequal shares. If you are contributing unequal amounts of money to the purchase price or mortgage payments, you should consider holding the property as tenants in common.

We can set out these shares in a Declaration of Trust. If you assign each owner a percentage of the property then we can set this out very simply in the Transfer at no additional cost. However, this is a rudimentary approach and may not fully reflect your intentions.

A more comprehensive approach is to prepare a separate Declaration of Trust which can deal with both the initial contributions and any later uplift in value. A typical situation we can provide for is set out in the example below:

John Smith and Mary Jones decide to live together and purchase 1 Acacia Avenue for £200,000.00. John contributes £50,000.00 and Mary £25,000.00 and the balance of £125,000.00 is raised by mortgage. They decide to purchase as tenants in common and a Declaration of Trust Deed is prepared to reflect their agreement. They decide between them that in the event of a subsequent sale John will receive his £50,000.00 and Mary will receive her £25,000.00 and any balance of sale proceeds after deduction of the mortgage will be divided equally. They subsequently sell for £225,000.00, the effect is as follows:-

Sale Price:			£225,000.00
Less: Mortgage outstanding - say		£125,000.00	
Due to John as agreed:		£50,000.00	
Due to Mary as agreed:		£25,000.00	£200,000.00
Balance			£25,000.00
Divided equally:	John:	£12,500.00	
	Mary:	£12,500.00	£25,000.00
John's total:	Original	£50,000.00	
	Divided Share	£12,500.00	£62,500.00
Mary's total:	Original	£25,000.00	
	Divided Share	£12,500.00	£37,500.00

Example 2

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Third Party Contributions

If a third party is making a financial contribution towards the purchase price, then they should take independent legal advice about how their interest can be protected. They should do so immediately, so that the arrangement can be agreed in good time. If you are having a mortgage, we will need to report this arrangement to them to confirm they are happy with it.

Your decision

This document has set out the options available to you. If you require any clarification on the advice given then please contact us, however we cannot advise you which one particular option to take.

Please take the time to consider your situation fully.

If you are purchasing on your own, then please tick here to confirm and sign below.

If you are purchasing with other people, then please choose one of the following options:

Joint Tenants

Tenants in Common in equal shares

Tenants in Common in Unequal Shares Shares: _____

I would like for you to contact me to discuss arranging a declaration of trust

Signed:

Dated: