

Moving In Together?

(This article was first published in the [Much Ado About Property](#) online newsletter Sep 2010).

Buying a house together can be a very exciting and expensive time but getting the right legal framework from the start can save a lot of heartache and expense at a later date.

Joint tenants or tenants in common?

The first consideration is whether you should own the property as joint tenants or as tenants in common. If the property is owned as joint tenants it will be owned by both parties together (until such time as it is split or “severed” in which case it is presumed to be owned equally. If not split and one of the joint owners dies then it will pass to the other joint owner automatically. If you don’t want your share of the property to go automatically to your partner or if you want to recognise that one partner has made more contribution to the purchase price then the property should be held as tenants in common, which can be held in unequal shares. In the event of the death of one joint owner their share will form part of their estate and either pass under the terms of their Will or under the rules of intestacy. If on any sale of the property it is intended that the funds should not be split equally, the property should be held as tenants in common and the details should be recorded in a declaration of trust.

Declaration of Trust

A declaration of trust sets out who gets what when a property is sold. This could include any third parties like parents who are to receive their share back or take into account additional contributions like mortgage payments. It can specify that one party has no financial interest in a property despite living there. It should not cover what happens on death as this should be covered by a Will.

Co-habitation Agreements

Co-habitation agreements go one step beyond declarations of trust which only cover the ownership of the property as they can cover far more areas. They can cover the division of other assets, or the payment of outgoings. In short, they can regulate the legal and financial responsibilities in a relationship. Such agreements can also be useful for rental properties to establish who pays the rent and other outgoings.

The Importance of a Will

Under the rules of intestacy unmarried partners do not inherit anything, so for instance if one unmarried partner dies and they have no children their share would pass to any surviving

parent. It is important that you make a Will if you are holding a property as tenants in common to ensure your Estate passes to the people you want it to pass to, whether that be your partner, your children or family and friends. Married couples and civil partners can inherit any assets free of inheritance tax, this tax break does not apply to unmarried couples so some tax planning advice will also be prudent. Everybody has a tax free band which is currently £325,000 and everything in excess of that amount is taxed at forty percent, and while a person's net worth may be below that figure during their lifetime their Estate may end up in excess of that figure without careful planning.

The use of life assurance

Life assurance is often used to pay off the mortgage but it can also be used by the surviving partner to buy out the share of the other partner. This is a sensible precaution to take. However, if the proceeds of a life assurance policy pay into the Estate this could create an inheritance tax liability. If for example someone has a net worth of £325,000 there would be no inheritance tax payable but if £200,000 life assurance is added to their Estate then they would have £80,000 of inheritance tax to pay. Instead the life assurance policy should be written into trust so that the policy proceeds do not form part of the Estate.

For more information please contact:

Carly Taylor

Chartered Legal Executive

020 8394 6223

Carly.Taylor@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.

No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.

© Russell-Cooke LLP. September 2010.