

Ownership of the House

Changing the way in which you own the house

Most couples who purchase a property together put it into joint names. If your house is in your spouse's sole name, you may need to register your **Matrimonial Home Rights** with the Land Registry. If you think the house is in your spouse's sole name, it is important that you discuss this with us even if you have not yet decided to separate.

If the property is in joint names, it can be owned in one of two ways, as “**joint tenants**” or “**tenants in common**”. Often (but not always), married couples own the house as “joint tenants”. The difference is that, if you own the property as joint tenants and one of you dies, the whole house will pass to the survivor automatically, regardless of what is in any will. If you own the property as tenants in common and one of you dies, the deceased's share will pass in accordance with his/her will (or under intestacy rules if there is no will).

If you are not sure how the house is owned, we can find out by carrying out a search at the Land Registry.

If you are joint tenants and are separating or divorcing, you may wish to consider changing the way in which you own the house. You can do this by serving a simple notice on the other owner. The effect of this is that you will then become tenants in common and will then be able to leave your share of the house to whomever you chose in your will. Please note, however, that if one party to a marriage dies without making provision in their will for the other, in some circumstances the surviving spouse may be able to make a claim to the Court under the Inheritance Acts for financial provision, challenging the other's will.

The downside in altering how the house is held is that should anything subsequently happen to your spouse, you would not automatically inherit their share of the property. Advice before any action is taken is essential.

The Mortgage

If the property is in joint names, it is very likely that the mortgage will be too. Both parties are liable to pay the mortgage on the property, even if one has moved out. If the bank or building society re-possessed the house, both would be responsible for any shortfall if the mortgage debt (including interest, penalties and legal costs) exceeded the money received on sale. Some mortgage terms also oblige you to ensure that the premiums on any endowment or life insurance policies are kept up to date. If you do not do this, you could be in breach of the mortgage terms. If there are difficulties in paying the mortgage it is advisable to discuss this with your lender as well as with us.

Remember

- You should not sign any documents relating to the house or to financial matters without first taking legal advice.

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- If you are separating or divorcing, it is important that you discuss with us the overall financial situation as well as ownership of the house. It is not generally advisable to make any changes or deal with assets on a piecemeal basis.
- If Decree Absolute has been granted and you are considering remarrying before any Order has been made in relation to financial matters, you must discuss this with us as soon as possible, and definitely before the marriage. The reason is that if no order has been made and no application issued with regard to the finances, you will be automatically barred from making an application once you have remarried.
- If you own the house as tenants in common, or sever the joint tenancy, it is essential that you make a will. You should always keep your will up to date; you do not need to wait until Decree Absolute is granted to deal with this. Please ask if you would like to make an appointment to discuss your will.
- *If you are not married you must take legal advice before severing the joint tenancy as your position may be different from that of married couples.*

Please speak to one of our specialist family solicitors for further advice on 01992 558 411.