

## CO-OWNERSHIP OF YOUR HOME

This form is for unmarried couples (of any gender) to complete where they are proceeding to purchase a property in which they intend to co habit.

This form deals with the following questions:-

- Who will hold the property?
- Who will own the property and in what shares?
- What will happen to the property if the relationship ends or on death?

Please read through these notes and the whole form carefully before completing it. Please discuss it with your partner, as you will both have to sign it. Please return the completed form to this office so that we may understand your wishes and our instructions.

A couple decide to buy a house or flat and cohabit. Probably the last thing on their mind is who owns what share in that property. However, relationships do break down and fatal accidents and bankruptcies do happen. For these and other reasons, it is essential when buying a property to discuss and record who is to own it. A failure to do so can lead to much heartbreak later, as well as to substantial legal costs.

Every couple has different circumstances. Accordingly, the law can be quite flexible. It will allow the couple to decide how the property in question is to be held, who will own it and what will happen if the relationship should end. Problems usually arise where the couple fails to make a decision or fails to record adequately what they have decided.

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### HELD AND OWNED

Most homes in England and Wales are registered. This means details of the property and the

person(s) holding it are recorded on a statutory Land Register. This Register is open to the public. The person(s) holding the property may be (and usually will be) the true owner(s). However, they need not be. Sometimes people wish to conceal the identity of the true owner(s) of the property and the law allows them to do so. It will be for the couple to decide who they want to hold the property and who will be the true owner(s)

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## **SINGLE OR JOINT**

A property can be held in a single name or it can be held in joint names.

Where two people own a property jointly, they may each have equal shares or they may have unequal shares. It is for them to decide.

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## **SURVIVORSHIP & INHERITANCE**

Where two people own a property jointly, they may agree that when one dies, the survivor should automatically become the owner of his share. This is known as a right of survivorship and it operates independently of any Will that the deceased person may have made. Alternatively, they may agree that when one dies, his share should be inherited by the persons he has named in his Will. It is for the couple to decide which of these alternatives they want.

Where couples are married, if one dies having failed to make a Will, then there are statutory rules governing the inheritance of their property. These rules benefit the surviving spouse, children and other relatives. However, where a couple are not married and one dies having failed to make a Will, then although the same statutory rules operate, these rules do not recognise a “cohabitee” as a spouse. In fact, these rules do not recognise a cohabitee at all. Accordingly, a surviving cohabitee could face losing not just their partner but also their home. For this reason, it is desirable that cohabitees make provision for what they wish to happen on the death of one of them.

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## **MORTGAGES**

Most properties are bought with the assistance of a loan made by a bank, which then takes a mortgage over the property as security for its debt.

Mortgages are usually repayable by regular instalments and banks usually require borrowers to show that they have sufficient earnings to be able to afford the repayments.

A mortgage loan may be made to a couple jointly. They will then both have a legal obligation to repay it. Or the mortgage loan may be made to just one party and only he/she will have a legal obligation to repay it. However, in either case, both may be earning money that they pool and use to repay it. Or both may be earning money but only one may repay it, the other one paying the household bills. Or only one may be earning money and repay it and the other may run the household and look children. In these and related situations, a decision should be taken whether the money loaned by the bank is to be treated as provided and repaid equally by the couple, or wholly by one party or in some other proportion.

Sometimes a couple assume that because one party has the income that the bank has relied on in order to grant the mortgage loan, that same person must either hold or own the property. That is not generally true. What is generally true is that the bank will require the person with the income to enter into the mortgage agreement, whether or not he also holds or owns the property.

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## **PURPOSE**

Most properties are bought for a purpose. Typically this would be to provide a joint home for the couple. The question then arises, what is to happen to this property when the purpose has come to an end, for example because the couple have split up or one has died? Should the property immediately be sold and the proceeds divided between them? Or should one party be allowed to continue living in the property for a time – for example until children have grown up or until that party's own death? The law allows the couple to decide what they want to happen.

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## **WRITING**

Arrangements involving land generally take effect only if written down and signed,. The best time to make these arrangements is when the property is being bought. Then the solicitor acting on the purchase can draft the relevant documents and place them with the ownership documents.

It is generally possible to change these arrangements at a later date but such changes also have to be recorded in writing and signed in order to take effect. The consent of a mortgage lender may also be required.

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