

TRINITY CHAMBERS LLP

ADVOCATES AND NOTARIES PUBLIC

Joint Ownership

The way in which a property is owned is known as “vesting”. When a property is to be owned jointly, it is very important to consider how it will be vested in the owners. There are essentially two types of joint vesting under Guernsey law, known as “survivorship” and “undivided shares”. You will need to let us know which form of ownership you have chosen in advance of completion.

For the purposes of the examples below, it is assumed that two people are buying. However, both ways of vesting can accommodate more than two owners. For instance, the common parts of an estate may be owned in undivided shares, the size of which will depend upon the number of properties forming the estate.

Survivorship

If you purchase a property in survivorship interests then upon the death of the first of you, the survivor will automatically become the sole owner. This is the more usual way for a husband and wife to buy property.

Survivorship provides great security because you can be safe in the knowledge that the survivor of you will have absolute control over the property (especially if you have not borrowed against the property or have life assurance).

However, in some scenarios it is not the best way to buy. For instance, if you want to be certain that a share in the property will pass to someone other than your partner upon your death, this method is not for you. This is important if you have children by a previous relationship, or wish to benefit brothers and sisters or parents from what will be a very sizeable asset.

If you buy in survivorship interests but have contributed different amounts to the purchase, it is important that you bring this to our attention. It may be that a side agreement, known as a “co-habitation agreement” should be prepared, which will seek to protect the difference between the amounts for whoever has paid the greater sum.

Although we cannot guarantee that the laws of the island will uphold such an agreement at the time that you seek to enforce it, under the law as it stands today you will each be entitled to one-half of the net value of the property without an agreement.

Survivorship cannot be overridden by the provisions of a will. However, it is important to consider wills of real property that reflect your wishes should you survive your partner. Such a will may also take into account the wishes of the first of you to die, but these are in no way binding upon the survivor.

Undivided shares

If you purchase a property in undivided shares (which can be whatever shares you choose) then upon the death of either of you, that person's share will pass to their heirs. The heirs may be named in a will, or if you die without a will then the property will pass in accordance with the law.

You should consider this method of ownership if you want to be certain that a share in the property will pass to someone other than your partner upon your death. However, it will mean that usually the survivor of you will end up sharing ownership with the heirs of the first of you to die.

Because it would be possible for those heirs to force a sale, you may wish to build into the title deeds a clause saying that the survivor of you will have a right of enjoyment over the property for a period of time. This is commonly until death, marriage or for a certain period of years.

If one of you is contributing more towards the purchase price than the other of you, this can be reflected in a co-habitation agreement or by taking unequal shares in the property. However, if you take unequal shares then you must consider whether the owner of the greater share should be paying a greater proportion of the bond repayments, repairs, and so on – because they will be directly benefiting from any increase in value of the property.