Joint property ownership

Update - This edition of the guide replaces the November 2007 edition. The guide has been amended to include the changes under the Land Registration (Amendment) Rules 2008, in particular the introduction of new form SEV.

1 Introduction
If you own your property jointly, either as a married couple, partners or friends, you will have chosen one of two kinds of ownership.

You will own your property as either: — beneficial joint tenants, or — tenants in common.

This is the case whether you own the property as freeholders or leaseholders.

2 The two kinds of ownership
Your conveyancer will have assisted you in deciding which kind of ownership suited you when you either bought or were given the property. You can later change between the two kinds of ownership but this is not always easy and sometimes your kind of ownership changes even if you do not want it to.

Land Registry cannot advise you which kind of ownership is best for you.

2.1 Beneficial joint tenancy
Owning your property as beneficial joint tenants means the property belongs to you and the other owner or owners jointly. You must all act together as a single owner, for example on a remortgage or a sale. You do not own specific shares in the property and you cannot give away a share of the property in a will. If you die, your interest in the property passes automatically to the other owner or owners.

A beneficial joint tenancy ends when either:
— the whole property is transferred to one owner
— the tenancy is converted into a tenancy in common, whether voluntarily or involuntarily, for example if one of the owners becomes bankrupt
— the property is sold to someone else, or
— one owner outlives all the others.

2.2 Tenancy in common
Owning property as tenants in common means the property belongs to you jointly but you also own a specific share of its value. You can give away, sell or mortgage your
share. If you die, your share of the property passes to the beneficiary in your will. You and the other owner or owners act together as a single owner, a duty enforced by an entry on the register for the property known as a Form A restriction:

**Form A restriction:** “No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.”

The effect of this restriction is that you must all be part of any transaction dealing with the whole of the property and if you are the last survivor of all the owners you must appoint another person to act with you in any deed of sale or mortgage and to jointly receive any sale price or mortgage advance.

A tenancy in common ends when either:
- you all sell the property (with all the shares) to someone else
- you all convert to a beneficial joint tenancy, or
- one owner acquires all the shares in the property.

A tenancy in common does not automatically end when all the original owners have died. It will continue unless one person has become the owner of all the shares or the property is sold. The law makes provision about who can become the registered owner or who can sell the property when this happens. Your conveyancer will advise you.

3 Recording your kind of ownership

3.1 Recording the information

Your kind of ownership may be recorded in the transfer or lease for the property, in a trust deed or in a will.

You may find the information in the transfer or lease by which you acquired the property. This is most likely in the case of a beneficial joint tenancy or a simple tenancy in common when, for example, a family home is owned by a husband and wife or registered civil partners.

Where there is a tenancy in common and the arrangements on how the shares are to be divided are more complicated, such as when unrelated people buy a house jointly in unequal shares, you may find the information in a trust deed. The deed will usually define each share carefully and state what can be done with it.

If you were all given the property under a will, the will may set out the kind of ownership, as may the document used to transfer the property to you.

If there is no record or the record is not what you thought you had agreed, you should ask your conveyancer about your position.

3.2 Finding the written record

Your conveyancer should have provided you with the information on how you own the property when you acquired it. You should look in your own records first.

Land Registry will normally have the original or a copy of the transfer or lease for the property. A copy can be obtained for a small fee (see Public Guide 1 – A guide to the information we keep and how you can obtain it).

We will not normally have a copy of a separate trust deed.

Probates and wills are available from the Probate Service (www.hmcts-service.gov.uk/infoabout/civil/probate/index.htm).

3.3 Land Registry cannot advise you of your kind of ownership

We cannot advise you on which kind of ownership you have chosen. The presence or absence of a Form A restriction on the register for your property does not necessarily signify which kind it is.

3.4 Has your kind of ownership changed?

You must always return to the original record and then check to see if a later event has changed your kind of ownership. This is because:
- Land Registry may have been given wrong or inadequate information when you were registered as owner, meaning that a Form A restriction may have been wrongly entered or omitted (Land Registry must enter a Form A restriction unless it has been satisfied that that the owners are beneficial joint tenants)
- a restriction may not yet have been cancelled despite you acquiring all the shares in a tenancy in common or following a failed claim to a share in the property
- events such as the bankruptcy of an owner who owns the property as a beneficial joint tenant, or a charging order in favour of a creditor of a beneficial joint tenant, may have changed your kind of ownership without you realising it. In such cases the law splits the property automatically into the same number of shares as there were beneficial joint tenants. If there were two joint tenants, they would each have a half share as tenants in common.

4 Changing your kind of ownership

4.1 Changing from a beneficial joint tenancy to a tenancy in common

This is sometimes known as ‘severance of the joint tenancy’ and is normally done by a notice of severance or by a new or amended trust deed entered into by all the owners. Other evidence of severance is possible. Your conveyancer will advise you on whether you should or how you can do this.

If you sever your joint tenancy, you must apply to Land Registry on form SEV (or form RX1) to enter a Form A restriction on your register. The form SEV must be signed by either:
- a conveyancer on behalf of all of you
- all of you as applicants, or
- one or more of you with either:
  - the original or a certified copy of the notice of severance given by one owner to the other(s) together with a conveyancer’s certificate or a statutory declaration by the applicant confirming that notice has been served on the other owner(s), or
  - the original or a certified copy of the notice of severance signed by the owner(s) on whom it has been served.

The Form A restriction does not itself change the ownership from a beneficial joint tenancy to a tenancy in common. The restriction only reflects the change you have made. You should keep the (new or
amended) trust deed or Notice of Severance in your record of ownership.

If you are completing form SEV without the help of a conveyancer, the examples set out in Appendix A – Example form SEV application for consensual severance of joint tenancy and Appendix B – Example form SEV application for unilateral severance of joint tenancy will help you. Use the ‘consensual’ example where all the owners are applying and the ‘unilateral’ example where only one of you is applying. Send the completed and dated form to the relevant Land Registry office (see section 7 Contacting Land Registry). No fee or covering letter is required.

4.2 Changing from a tenancy in common to a beneficial joint tenancy

This is normally done by a new (or amended) trust deed entered into by all the owners. Your conveyancer will advise you.

You need to involve Land Registry only if there is already a Form A restriction on your register (which there should be). To cancel the restriction, you must apply on form RX3, which must be signed either:
— by all of you, or
— a conveyancer on behalf of all of you or one of you on behalf of all of you.

The completed form must be supported by either:
— a certified copy of the new (or amended) trust deed showing that everyone with a share or interest in the property agrees to the change, or
— a certified copy of the transfer showing that all the owners of shares transfer their shares to all the beneficial joint tenants, or
— a certificate given by a conveyancer that a deed in one of the forms referred to above has been entered into by all the parties.

The supporting evidence must confirm that:
— together all of you own all of the shares in the property and no one else owns any other share in the property
— none of you has mortgaged any individual share
— none of you is bankrupt
— none of you has a creditor with a charging order against any share, and
— you all now hold the property as beneficial joint tenants.

If you are completing form RX3 without the help of a conveyancer, the example set out in Appendix C – Example of a completed form RX3 will help you. Send the completed and dated form to the relevant Land Registry office (see section 7 Contacting Land Registry). No fee or covering letter is required.

5 Cancelling the Form A restriction in other circumstances

5.1 When a single surviving owner remains as owner

In this circumstance form RX3 must be used to cancel the Form A restriction. The form must be signed by you or by a conveyancer acting on your behalf. It must be accompanied by evidence that you have:
— become entitled to the whole of the property, that is, no one else owns or has any interest in any share of the property so for example if all the other shares have been left to you in the will of the other co-owner(s) who has died you should lodge a copy of the probated will
— not encumbered your share in the property, that is, you have not done anything that would affect or limit your share in the property (for example by mortgaging it), and
— not received notice of any incumbrance on the share of a co-owner(s) of the property who has died.

Land Registry will accept a statutory declaration by the owner or a certificate from the conveyancer acting for the owner provided the conveyancer has personal knowledge of the facts. Please provide any documentary evidence available.

5.2 When a single surviving owner sells the property

If you are the last surviving owner of a property where you owned as tenants in common, then the buyer’s conveyancer will require evidence of compliance with the Form A restriction. This will be either evidence of the kind mentioned in section 5.1 When a single surviving owner remains as owner or the owner will need to appoint another person to jointly receive the sale price. Your conveyancer will advise you.

6 Correcting the register

If you believe the register for your property wrongly contains or omits a Form A restriction, you should contact the relevant Land Registry office for guidance.

7 Contacting Land Registry

You must send your application to the Land Registry office that deals with the local authority area in which the property is located. You can get this information from our website at www.landregistry.gov.uk or by phoning one of our offices.

8 Enquiries and comments

If you have a particular concern that is not covered by this guide, please contact Land Registry – see the Contact details panel on the front cover of this guide. If the matter is particularly complex, it may be better to write to us.

If you have any comments or suggestions about our guides, please send them to:

Registration Change Group
Land Registry
Lincoln’s Inn Fields
London
WC2A 3PH

(DX 1098 London/Chancery Lane)