



## THE JOINT ACQUISITION OF PROPERTY BY COHABITEES/CO-OWNERS

These notes will largely (but not exclusively) be of interest to unmarried couples and they summarise the main points which you should consider. Please let us have your instructions upon these before proceeding with the purchase.

You should bear in mind that the law will not recognise you as husband and wife and therefore none of the volumes of matrimonial law and precedents will affect you. Instead you will generally be treated as two individuals according to the laws of contract property and trust.

The relevant factors to be noted are therefore:

### 1. Joint Tenancy/Tenancy in Common

If the property is purchased in joint names, then you will need to decide whether you want to be "joint tenants" or "tenants in common".

- (a) If you choose the former and one of you dies while the property is still jointly owned, then his or her share will automatically pass to the survivor. If you choose the latter, then the share of the deceased will pass according to the terms of his or her Will, or if no Will has been made, according to the rules of intestacy.
- (b) If you decide to hold as tenants in common, you must decide beforehand in what proportions the property is to be held, eg 50:50, 75:25 etc.

If you do decide on a joint tenancy, you should note that it can be terminated at any time before death by service upon the other owner of a formal notice to that effect. This destroys the right of survivorship, leaving the parties with equal shares.

### 2. Outgoings

You will need to decide in what proportions you are each to contribute towards the cost of purchasing the property (eg legal fees, mortgage repayments and deposit) and of its general upkeep (eg insurance premiums and repairs). Normally these proportions are the same as your respective interests in the property. Thus, if you hold as joint tenants or as tenants in common 50:50 then these costs are shared equally.

### 3. Purchase of Other's Share

Are each of you to have the right to buy out the other person's share if you decide to separate and if so, is the price to be full market or a concessionary figure?

#### 4. Power of Sale

As both of you will have interests in the property, it will be held upon trust for sale. Either of you may always apply to the Court for execution of that trust, ie the sale of the property, but this is a matter for the discretion of the Court.

Any attempt to postpone that power may be regarded as invalid, but nevertheless would either of you require us to seek to impose such a condition?