

Buying property with your partner in Jersey is not always straightforward

Buying a property with a partner is not always as straightforward as you might think.

Couples buying a property together often make different contributions. Perhaps one has the entire deposit to put down, or each contributes a different amount towards joint mortgage repayments. It can also be the case that only one has the required housing qualifications to buy the property, meaning that a freehold purchase will have to be in his or her sole name. Or, one of the couple might have children and wish to safeguard their inheritance.

In such circumstances careful thought should be given as to how to structure the ownership of the property and whether it would be a sensible precaution to draw up an agreement to record what should happen to the property, and any sale proceeds in the event that the couple go their separate ways, or one of them dies. These are often referred to as Equity or Cohabitee agreements.

Freehold and flying freehold properties are often bought jointly and for the survivor of the parties, so that if one party dies the property will automatically vest in the survivor. An alternative, which is less used, is that the couple buy the property as tenants in common. This enables each to own a fractional share in the property, which can be left to third parties in the event of death, and does not automatically vest in the survivor. This may be most appropriate where one or both have children from a previous relationship and they wish to ensure those children inherit their interest in the property. In such circumstances, careful consideration needs to be given as to what would happen to the survivor of the couple. This option is not available to people buying share transfer property as it is usual for shares to be held jointly for the survivor, and therefore for the survivor to have a legal entitlement to have the shares put in his or her sole name.

An agreement can provide for many scenarios and must be tailored to specific circumstances. Wills should also be put in place to reflect the intent of the agreement.

Each party should be independently advised so that he/she fully understands his/her exposure and the protection afforded both in terms of the property ownership, the mortgage obligations and the division of sale proceeds.

It is important to remember that the effectiveness of an agreement is only put to the test if the couple separate and have to rely upon it. At this point they need the agreement to clearly provide for what will happen. This could be many years after the agreement was made and their circumstances may have altered. For example, the couple may have had a child, one of them might have given up work to care for the child and is no longer contributing financially, or the contributions may have altered because one person has increased their earnings and has been paying more than the other.

In the event of a significant change in circumstances it is advisable to revisit the agreement and make any updates that are required to reflect the current position, as a dispute can be costly to resolve. In the event of dispute, ultimately the court, while taking note of the content of the agreement, will make an order to meet the justice of the case. It would not uphold an out-dated and/or unjust agreement.

Such a case came before Jersey's Royal Court for the first time in 2012. In that case the property was purchased in the housing-qualified party's sole name. The couple remained together for some 10 years, during which time they had two children and the mother stopped contributing to the mortgage but paid other expenses in lieu. The agreement no longer reflected the changed circumstances. Some six years after their separation the father sold the house and retained the whole proceeds. The court determined that the father had been unjustly enriched and awarded the mother 40% of the sale proceeds.

For an informal chat to discuss any of the above, please do not hesitate to contact the Ogier property team on +44 1534 514056.

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