

The [Bolt Burdon](#) Private Client Bulletin – 10 August 2006

Whose home is it anyway?

If you own a property with a spouse, family member or friend, have you agreed your respective equitable shares in the property?

Legally, co-owners will be registered as 'Joint Tenants' with HM Land Registry. Broadly, this will mean that you hold an indivisible share in the property, and that upon the death of one co-owner the legal title will pass to the surviving co-owner(s) separately from the provisions of a Will or the Intestacy Rules.

As co-owners you could decide to sever your Joint Tenancy in equity, so that you hold the property as Tenants in Common. Were you to do so, in the absence of any express agreement as to how the property is held, you would hold the property in equal shares.

In the absence of an express agreement, should a dispute arise, we must caution that the above broad definitions will not necessarily stand up to scrutiny.

When deciding on cases of equitable ownership, the Courts had favoured what is called the 'resulting trust.' This involves an investigation of the initial mathematical contributions to the purchase alone. By way of example, in one case the claimant had made no payments to the purchase price, but instead had contributed to a joint bank account out of which most household expenses had been paid including mortgage repayments. He had also made a lump sum payment after the house was acquired. The Court of Appeal held that none of these contributions could generate an equitable interest under a resulting trust.

However, the Courts have in recent years been favouring the alternative of the 'constructive trust.' With such, they will first ask whether there is evidence from which to establish a common intention that each party shall have some beneficial interest, such as, an express discussion at the time of purchase. The Court will then consider the extent of those interests. In the absence of any discussion/agreement between the parties, the Court must seek to determine what is fair having regard to all the circumstances of the case, i.e. arrangements to meet outgoings (mortgage repayments, repairs, insurance etc) and contributions towards refurbishment. Further, it seems that the parties' contributions need not be restricted to financial payments, but may include contributions such as domestic and spousal services.

Should the potential for the Court to be called upon to find or impute a common intention be of concern, you should consider completing a Declaration of Trust with your co-owner(s) by which, amongst other things, your obligations and respective equitable shares could be agreed.

If you have any queries you can phone or email Glenn Smyth or Rod Smith on glennsmyth@boltburdon.co.uk or rodsmith@boltburdon.co.uk or phone 020 7288 4700. Our full range of services includes Financial Planning, Trusts Wills & Probate, Property, Matrimonial and Family Law, Commercial Law, Commercial Dispute Resolution, Debt Collection, Compensation Claim Litigation. Visit our web site at www.boltburdon.co.uk To stop receiving this bulletin, reply stating 'unsubscribe'.