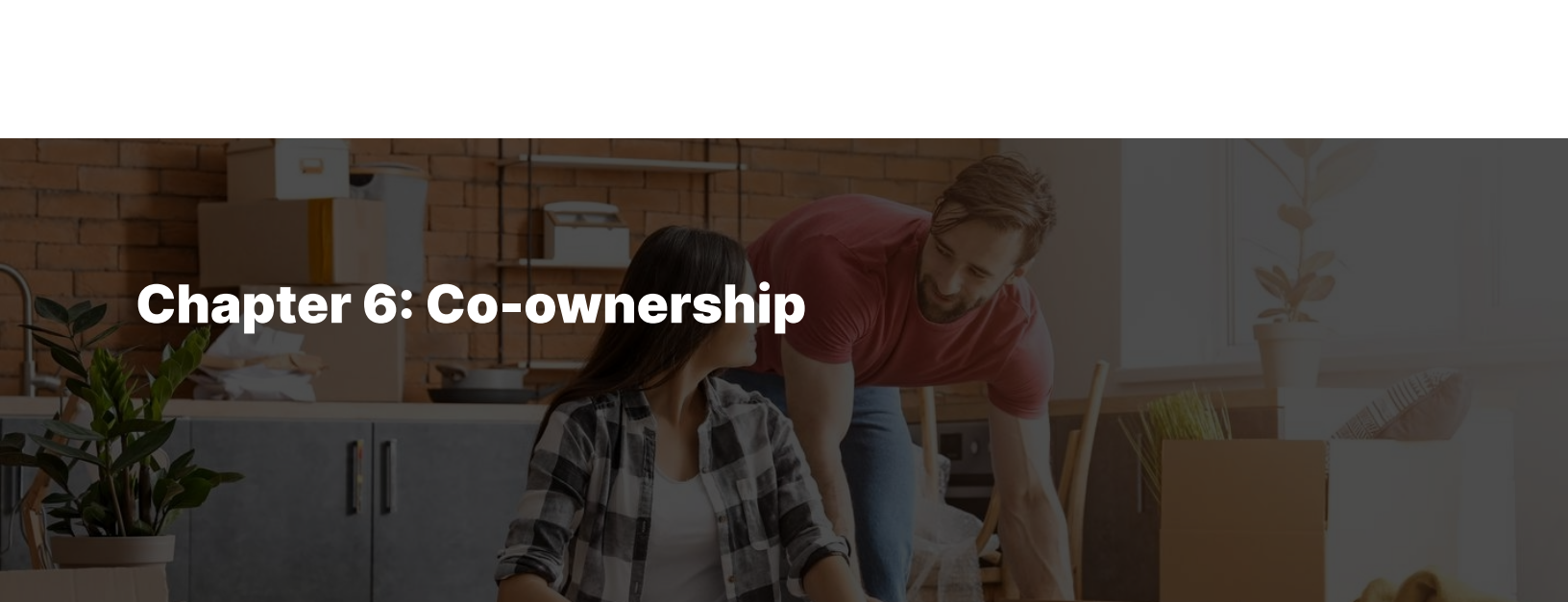


A photograph of a man and a woman in a kitchen, surrounded by cardboard boxes, suggesting they are moving. The man is leaning over a box, and the woman is looking at him. The image is dimmed to serve as a background for the chapter title.

Chapter 6: Co-ownership

Aims of this Chapter

6.1 Co-ownership

6.2 Co-owning Sunnybank

6.3 The roles of trustees and beneficiaries

6.4 Types of co-ownership

6.5 Co-ownership and wills

6.6 Co-ownership and conveyancing

Knowledge check

6.7 Chapter summary

Aims of this Chapter

We will now move on to look at the subject of co-ownership. This is a topic which is very important to conveyancing practitioners and their clients. When we act on a sale, it is important to ensure that the sale proceeds are paid out to the correct recipients. When we act on a purchase, we must give comprehensive advice if two or more people will have an interest in the land being purchased.

This chapter will cover:

- joint tenants
- tenants in common
- the doctrine of survivorship
- the Form A restriction
- severance, and
- overreaching.



[CONTINUE](#)

6.1 Co-ownership

We have seen that the legal estate and beneficial interest in land can be held by different people. We have also seen that the freehold of a single piece of land may be subject to many different estates and interests belonging to many different people.

For example, imagine that Becky purchased 65 The Chestnuts, a freehold property.

Estates and interests given in **Table 6.1** could all exist in relation to Becky's property.

Table 6.1

Estates	Interests of third parties
(1) Becky will be the freehold owner of 65 The Chestnuts (she is the freehold estate owner)	(1) Imran has a right of way over the driveway of 65 The Chestnuts (an easement) (2) Becky has agreed with the seller in the deeds that she will not use the house for business purposes (a restrictive covenant) (3) Becky has taken out a mortgage with Britannic Building Society (the

society therefore has an interest in the property)

Alternatively, the same piece of land may be owned by two or more people who **own the same** estate or interest in it. This is a different situation from that shown in **Table 6.1**, as two or more people own the same estate or interest in the land. For example, two people own the freehold of a house together. This **joint ownership** of land is called **co-ownership**. If Becky had bought 65 The Chestnuts jointly with her boyfriend, Sam, they would have been co-owners.

Whenever there is co-ownership, it will be one of two types, either joint tenancy or tenancy in common. The word “**tenancy**” has nothing to do with the word in the context of paying a landlord, but means ownership.

It is necessary to have some knowledge of the law on co-ownership in order to be able to advise clients on the best choice for their circumstances, and the implications of their choice once it has been made.

The **Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996)** provides that, whenever there is co-ownership, the land is subject to a **trust of land**. This trust arises automatically and exists even if the co-owners are not themselves aware of it.



CONTINUE

6.2 Co-owning Sunnybank

Take Jennifer and Barry as an example. They own their current house, Sunnybank, together and have been registered as the registered proprietors at HM Land Registry (HMLR). Since more than one person owns the land, a trust of land arises and there must be trustees and beneficiaries.

Jennifer and Barry are the trustees holding the legal estate (as they are the registered proprietors) but they are also, at the same time, the beneficiaries, holding the land on behalf of each other. Thus, they both hold an equitable (or beneficial) interest in the property as well as being the legal owners (**Figure 6.2**).



Figure 6.2

It is possible for the beneficial owners to be someone other than the legal owners. Remember that all legal owners must be at least 18 years old. Equitable or beneficial owners can be any age.

CONTINUE

6.3 The roles of trustees and beneficiaries

Trustees hold the legal estate and have the right to deal with (i.e. sell or mortgage) the land. Trustees are merely looking after the land on behalf of beneficiaries.

Beneficiaries hold a beneficial interest recognised in equity. They have the right to the proceeds of sale. Beneficiaries have additional rights, such as the right to be consulted if the trustees wish to sell or mortgage the property.

If Barry's parents, Jack and Jill, contributed towards the purchase of Jennifer and Barry's property, Sunnybank we would need to look at the nature of their contribution. Assuming this contribution was not a gift, Barry's parents may have an interest in the house. This interest would be equitable as they are not the registered proprietors (i.e. not legal owners). If Barry's parents do have an equitable or beneficial interest in the land, the property would be held as given in **Figure 6.3a**.



Figure 6.3a

A trust is a situation where property is held by one or more people “**upon trust**” for another person or persons. The persons holding the property on trust are called the **trustees**, and the people for whom the property is held are called the **beneficiaries**. The trustees hold the legal estate in the land for the benefit of the beneficiaries – for instance, a mother and father might hold a house on trust for their son who is under the age of 18.

Let’s look at another example. If Becky and Sam bought a house together, they would be the trustees holding the legal estate. At the same time, they would also be the beneficiaries holding the land on behalf of each other. Therefore, they would hold an equitable (beneficial) interest in the property as well as being the legal owners.

Figure 6.3b illustrates the position.

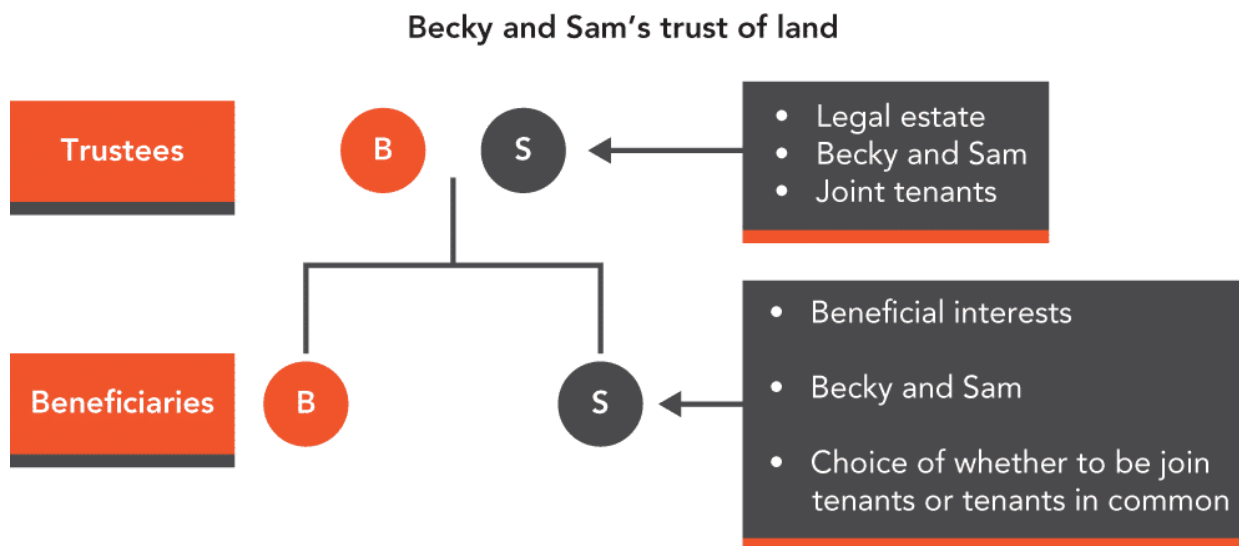


Figure 6.3b

It is therefore important to think about the legal estate and the beneficial (equitable) interests separately. As stated, the legal estate in the property will be held by the trustees. The legal estate must be held by the trustees (legal owners) as joint tenants. There is no choice in this matter. This means that the legal estate in the land always passes by

survivorship to the remaining joint tenants (see later for an explanation of the doctrine of survivorship).

The fact that the legal estate is held by the trustees does **not** prevent other people having an interest in the land but their interests (beneficial interests) will be through and by virtue of the legal estate held by the trustees. Usually, for example, in a situation where a couple buy a house together, the trustees are also the beneficiaries.

CONTINUE

6.4 Types of co-ownership

There are two types of co-ownership in equity:

- joint tenancy; and
- tenancy in common.

Joint tenants each own the whole property.

Tenants in common own a notional share in the property.

s1(6) LPA 1925 states that the trustees, that is, the legal owners, can own land only as joint tenants.

The beneficiaries (i.e. equitable owners entitled to the monetary value of the property) may be either joint tenants or tenants in common. So, the beneficial owners can choose to be either joint tenants or tenants in common. They will make this choice when they buy the property, following advice from their conveyancer.

6.4.1 Joint tenancy

For a joint tenancy to exist, certain criteria must be satisfied. These criteria are called the **four unities**:

Possession

Each tenant is entitled to possession of the whole land (i.e. they cannot be a trespasser on any part of the land).

Interest

The interest of each tenant must be the same (e.g. each must hold the freehold, or each must hold the leasehold).

Time

The interests must arise at the same time.

Title

Each tenant must gain their title from the same document.

Between joint tenants the **right of survivorship applies**. Surviving joint tenants automatically take the interest of any joint tenant who has died (regardless of any provisions to the contrary in the deceased's will, if any).

At law, all co-owners are joint tenants. This means that the legal estate in the land always passes by survivorship to the surviving trustee(s).

The important difference in practice relates to the **doctrine of survivorship** (often referred to as the right of survivorship), which exists in the case of a joint tenancy but not in the case of a tenancy in common. The right of survivorship means that if one joint tenant dies, their share **automatically** passes to the surviving joint tenant(s). This is because, in the case of a joint tenancy, each co-owner is regarded as jointly owning the whole of the property rather than owning a distinct share of it. A sole surviving joint tenant can sell the property to a buyer.

CONTINUE

6.4.2 Tenancy in common

Tenancies in common can exist only in equity.

Where a tenancy in common exists, the tenants each own a notional share in the land.

In a tenancy in common, there is no right of survivorship, and the only unity that applies is the unity of possession. On the death of a tenant in common, the property passes according to the deceased's will or under the intestacy rules.

It is not uncommon for friends to purchase a house together. Where unequal contributions have been made, these friends would want to preserve their interest by ensuring that they are described as tenants in common and indicating the shares they own. This would be either in a memorandum of severance on the conveyance for unregistered land or a Form A restriction (see below) on the register in registered land. If one beneficial owner (tenant in common) dies, their share will be passed on to their heirs under their will (rather than the other co-owners).



This kind of arrangement is also often chosen by couples who have children from previous relationships.

On the other hand, couples may wish to be beneficial joint tenants so that, on the death of either, the other automatically takes the whole property (**Figure 6.4**).

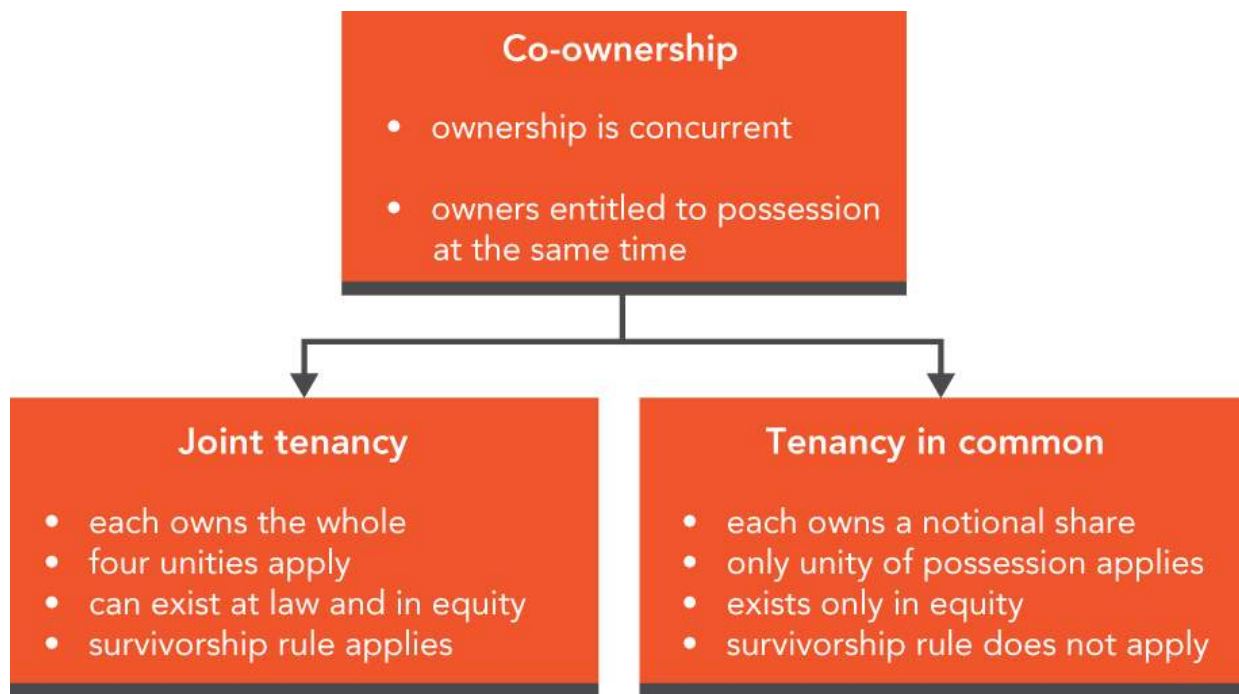


Figure 6.4

It is presumed that business partners hold property as tenants in common. This presumption can be rebutted.

It should be noted that an express declaration in the deeds is conclusive evidence of the parties' status as beneficial joint tenants or tenants in common.

CONTINUE

6.4.3 How do we tell in registered land whether the proprietors hold as joint tenants or tenants in common?

You have seen that a proprietorship register might contain an entry called a restriction. You will recognise it because the entry will be prefixed with "RESTRICTION".

A restriction makes it apparent from the register that either the powers of the relevant proprietor are limited, or that a prior condition must be met before registration can be completed. The purpose of restrictions is to regulate registration, not the transactions being registered.

There are a significant number of "**standard restrictions**" which are contained in HMLR Practice Guide 19. The detail is outside the scope of this course but you must be able to recognise whether a title is affected by a restriction.

A restriction is the method used to protect an interest under a trust. This means that if someone has a behind-the-scenes beneficial interest in a property, perhaps because they contributed to the purchase price, a restriction will be placed on the proprietorship register. Remember that the details of the beneficial interest do not appear on the register of title. This means that the party with the benefit of the equitable interest will not be detailed on the register. The purpose of the restriction is simply to alert a buyer's conveyancer that a behind-the-scenes beneficial interest exists but the conveyancer is not concerned to know who holds the interest or the exact nature of that interest.

There are different restrictions for different purposes. The one that we are interested in is called a "**Form A restriction**", and it is the most commonly occurring restriction which you will see on a proprietorship register.

The wording of the Form A restriction is as follows:

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.

This restriction tells us that someone holds a behind-the-scenes beneficial interest in the affected property. It therefore tells us that the beneficial interest is held on a tenancy in common.

If there is no restriction in this format and the proprietorship register, this tells us that the beneficial interest is held as joint tenants.



Activity

Form A restriction

Follow the link below to HMLR's Practice Guide 19 and find the wording for the Form A restriction in Appendix B. Keep the wording of the restriction for reference and you will need to be able to recognise it on a registered title.

Compare the wording of the Form A restriction with some of the other restrictions in Appendix B



Practice guide 19: notices, restrictions and the protection of third-party interests in the register

Please note that HM Land Registry's practice guides are aimed primarily at solicitors and other conveyancers. They often deal with complex matters and use legal terms. You can search for particular words or phrases in this guide by pressing 'Control' and 'F' on your keyboard if you are viewing this guide online.

[READ MORE GOV.UK](#)

CONTINUE

6.4.4 Dispositions

You will see that the HMLR wording in the various restrictions refers to “dispositions”:

No disposition of the registered estate is to be registered unless...

The word “**disposition**” is not defined in the **Land Registration Act 2002 (LRA 2002)** or **Land Registration Rules 2002 (LRR 2002)**. However, in general terms, “disposition” can be taken to mean an action by the registered proprietor which results in a registration application. The most common examples would be a transfer of the legal estate or the creation of a legal charge. The effect of a restriction therefore is that a transfer following the sale of a property cannot be registered by the buyer’s conveyancer until such time as any restriction on the proprietorship register is complied with (or that HMLR is satisfied that the restriction does not apply to that registration/transaction).

Note that not every action by the registered proprietor is within the definition of a “**disposition**”, but most transactions that conveyancers deal with regularly will do so.



Link to Practice

You can see therefore how important it is for a conveyancer acting for a buyer to ensure that any restriction on the seller’s proprietorship register can be complied with before the transaction is legally binding on exchange of contracts. You will

see when we look at the conveyancing process that the buyer's conveyancer must register the buyer's title with HMLR following completion. It would clearly be a disaster for the buyer's conveyancer if there was a restriction on the register which they have missed and could not comply with which had the effect of stopping the registration into the buyer's name.

CONTINUE

6.4.5 Joint tenants and tenants in common

In registered land, in the absence of a Form A restriction on the register, the buyer is entitled to assume that the sole surviving registered proprietor (owner) is solely entitled to the property. The buyer may, therefore, deal with the survivor on proof of the death of the deceased co-owner. This will be achieved by checking the death certificate.



Link to Practice

A conveyancer must be able to advise two or more buyer clients and the co-ownership options when they are acting on a purchase. The conveyancer should also advise on the most appropriate form of co-ownership, dependent on the client's circumstances.

Joint tenancy is usually the most appropriate form of co-ownership for married couples or those in stable relationships

since, on the death of one partner, the house will be owned by the other.

You should also be able to recognise the most appropriate form of co-ownership in an assessment.

There is no such right of survivorship in the case of a beneficial tenancy in common. Tenants in common own identifiable **shares** in the land.

For instance, three friends might buy a house together and, because of unequal contributions to the purchase price, decide to divide the ownership in proportionate shares (e.g. A: 2/5 B: 2/5 C: 1/5). Two business partners might buy business premises and decide to own as beneficial tenants in common in equal shares. As there is no right of survivorship, on the death of one tenant in common, their share does **not** pass automatically to the other co-owner/s. With registered land there will be a Form A restriction on the register of title to reflect this. Indeed, this is desirable in the cases just outlined. One of the friends would probably want their share to pass to members of their own family such as their parents upon their death and not to their friends. The deceased tenant in common's share will, in fact, be dealt with by their personal representative (the person dealing with the estate) in accordance with the deceased's will or under the intestacy laws. The intestacy laws govern what happens to a person's estate where there is no will.

It is therefore not safe for a buyer to buy the land from a sole survivor if there was a tenancy in common, as it is not possible to know whether other people (e.g. under the tenant in common's will) have a beneficial interest in the property. As explained earlier, the deceased tenant in common's beneficial interest might have passed to someone other than their surviving co-owner.

CONTINUE

6.4.6 Severance of the beneficial joint tenancy

As we have seen, there can only be a joint tenancy at law (**s1(6) LPA 1925**). The legal estate will always be held by trustees as joint tenants; it cannot be severed. Severance is a method by which a beneficial joint tenancy is converted into a beneficial tenancy in common. So, even if a beneficial joint tenancy is created initially, it may not remain so.

A beneficial joint tenant is allowed, at any time before his or her death, to sever the joint tenancy so that he or she becomes a beneficial tenant in common. If such a severance does take place, it only affects that share. The share that is severed is in proportion to the number of beneficial joint tenants.



Link to Practice

So, we have seen that severance is the way of bringing a beneficial joint tenancy to an end and effectively converting it into a tenancy in common. There are various ways that this might happen but the most common is that co-owners decide to convert the joint tenancy to a tenancy in common, possibly for tax reasons. The way that this will happen is simply the service (sending) of a notice by one co-owner and the other confirming their intention to sever the joint tenancy and create a tenancy in common. We will discuss this further later.

CONTINUE

6.4.7 Overreaching

The importance of overreaching in the conveyancing context cannot be overstated. It is a legal mechanism whereby, if the purchase price for a property is paid to two or more trustees, any behind-the-scenes beneficial interest is converted from an equitable interest in the land to an interest in the sale proceeds. Put simply, the interest of a behind-the-scenes beneficiary transfers from the land to the money.

In general, the buyer is not concerned with who owns the equitable interests, or whether those interests are held on joint tenancy or tenancy in common. A buyer from the holders of the legal estate (the trustees) is not concerned with the trusts affecting the land provided they pay the purchase price to the trustees of the trust, being at least two in number (or a trust corporation).

A buyer will take free of any beneficial interests that might exist under a trust of land if they pay the purchase price to at least two trustees. This is why the Form A restriction in registered land states that there is to be no disposition by a sole registered proprietor, so the restriction warns a buyer to deal with two trustees. This principle whereby the buyer takes free of beneficial interests under a trust of land is called **overreaching**. As long as the purchase money is paid to all the trustees of the legal estate, being at least two in number, the interests of any beneficiaries are no longer in the land itself but in the proceeds of sale held by the trustees.

The buyer thus takes the land free of the beneficiary's interest. The beneficiary then has a claim over the proceeds of sale paid to the trustees. This may seem harsh on the beneficiary who has lost an interest in the land, but beneficiaries are usually consulted about any sale under **TLATA 1996**. The practical effect of this is that a second trustee will need to be appointed in cases where land is held by a sole trustee; if no such appointment is made a buyer runs the risk of purchasing land subject to unwanted beneficial interests.

Therefore, if there is a sole surviving legal owner and there was a tenancy in common, it will be necessary for a second trustee to be appointed so that two trustees can sell.



Link to Practice



For example, imagine that Andrew and Barry buy a house together.

As we have seen earlier, they have to own the legal estate as joint tenants. However, they decide that they will hold the beneficial interests as tenants in common and this is stated in the purchase deed. Barry dies a year later. The sole legal owner will now be Andrew as the legal estate will pass to him by survivorship. Barry's beneficial interest (share) will not automatically pass to Andrew however. It will pass under Barry's will or under the intestacy rules. It is not safe for a buyer to buy the house from Andrew alone as Andrew may not be the sole beneficial owner (we do not know where Barry's share has gone). Andrew must appoint a second trustee to sell with him.

The buyer then takes the land free of any beneficial interests that might still exist (e.g. the interest of Barry's heir) under the trust of land.

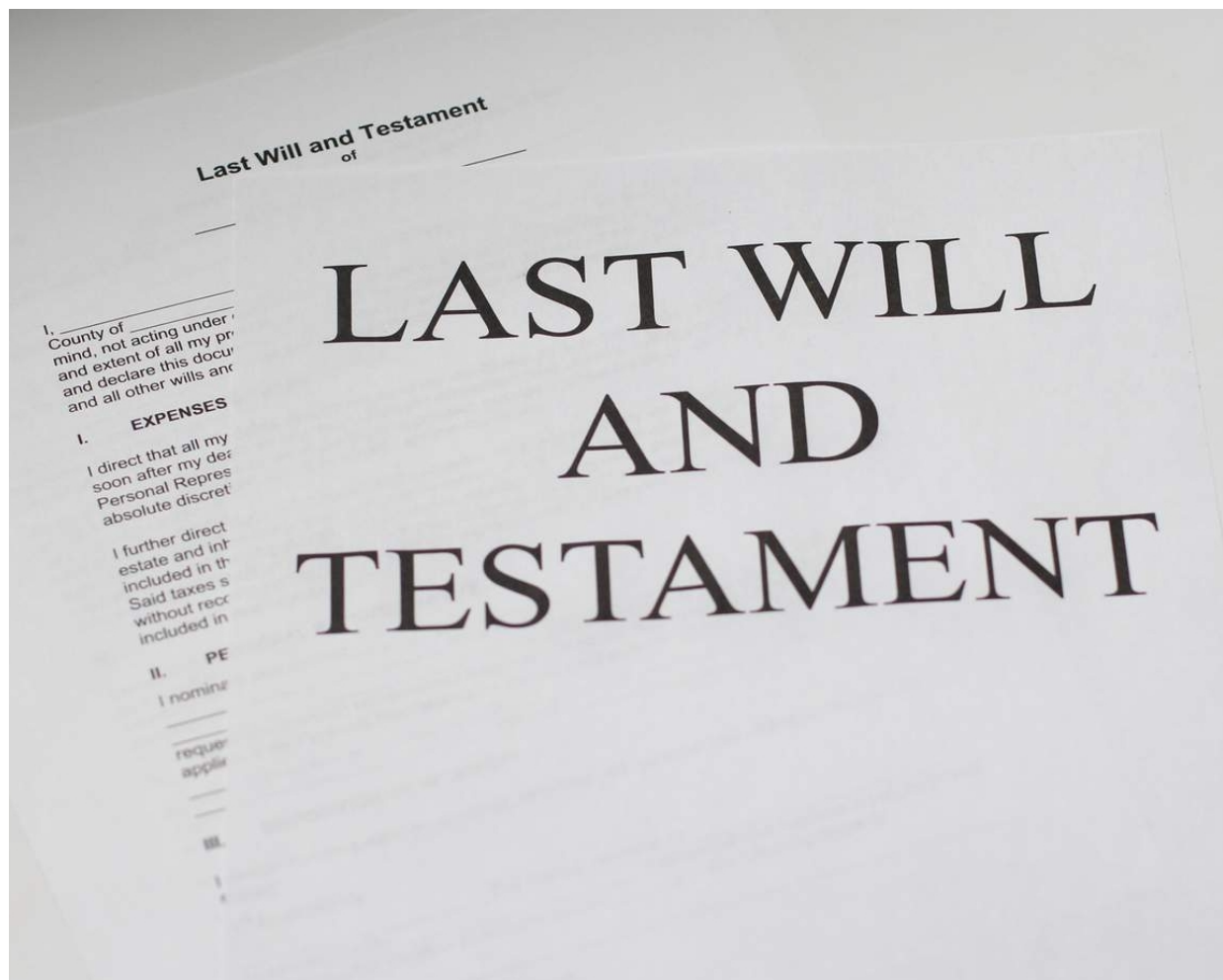
Great care must be taken when advising clients of the appropriate form of co-ownership.

CONTINUE

6.5 Co-ownership and wills

When taking instructions for a will regarding the gift of a co-owned property it is very important for the practitioner preparing the will to obtain a copy of the title to the property to establish the current position. The practitioner should not simply take their clients' word for it.

Often it is not appropriate to give the address of a specific property to be gifted in a will because the testator may sell the property or transfer their interest during their lifetime. In many cases, the testator will not name a specific property and any interest in a property which they own on the date of their death will fall into their estate to be dealt with in accordance with the terms of their will.



However, if the testator wants to leave their interest in a specific property to a named beneficiary, the practitioner preparing the will must ensure that the title to the property also reflects these intentions.

In many cases, co-owners will hold the legal and beneficial interest as joint tenants. The survivorship rule will apply meaning that on the death of a joint tenant, their interest in the property will pass to the survivor/s as of right. Any gift in a will of this property which purports to leave the interest of the testator to anyone other than the co-owners will fail.

Thus, if co-owners currently hold the legal and beneficial interest as joint tenants, but one co-owner wishes to leave their interest in the property to someone other than their fellow co-owner/s, then it will be necessary for the practitioner preparing the will to ensure that the joint tenancy is severed in equity. This will create a tenancy in common in relation to the

share of the testator. It is only when this is done that the gift in the will to someone other than the co-owner/s will be effective.

If the title to the property is registered, the joint tenancy in equity can be severed by the serving of a notice of severance on the testator's fellow co-owner/s. To ensure that the title accurately reflects the severance, HMLR's Form A restriction must be added to the proprietorship register. The most straightforward way of doing this is by submitting form SEV to HMLR.



Activity

Getting the Form A restriction on the register of title

Follow the link below to HMLR's form SEV. Read the form to familiarise yourself with its contents so you can understand how the restriction is put on the register.

Note that form SEV is only used for straightforward notices of severance that are served between the parties, usually by consent. The most common example of severance of a beneficial joint tenancy taking place in the context of will drafting is a couple who own a property together and who want to leave their interest in the property to their child or children for tax purposes. In this case, the severance will be by agreement.



Form A restriction: application to enter (SEV)

Application form SEV to enter a Form A restriction on severance of joint tenancy by agreement or notice.

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An example of severance without agreement might be in a matrimonial situation. If a couple are splitting up, one of them might not want their spouse/ civil partner to take their interest in a co-owned property by survivorship, in which case they will need to sever the beneficial joint tenancy to create a beneficial tenancy in common. In this case, the notice of severance might not be by consent and it might be necessary to prove that the notice of severance was received. In this case, a form SEV might not be appropriate and it would be necessary to use form RX1 to register the Form restriction and the proprietorship register.

Follow the link below to form RX1. Download it and compare it with form SEV. You will see that the RX1 is a generic form which deals with the registration of any of the restrictions in Practice Guide 19.



Enter a restriction: registration (RX1)

Application form RX1 to enter a restriction.

[READ MORE GOV.UK](#)

CONTINUE

6.6 Co-ownership and conveyancing

You can see that it is necessary for a buyer's conveyancer to give comprehensive co-ownership advice on every conveyancing transaction where there is more than one buyer. The conveyancer must obtain sufficient information from their clients to be able to give comprehensive advice. This will include finding out how the purchase money is being funded, whether one buyer is putting in more money than the other, whether there is a gift from a family member and/or mortgage financing.

Generally, most conveyancers will give written co-ownership advice towards the beginning of the purchase transaction. They will often ask their clients to complete and sign a pre-printed form providing the general information to the conveyancer about the transaction and confirming whether the buyers would like to hold the beneficial interest as joint tenants or tenants in common.

The conveyancer should obtain this information from their clients prior to exchange of contracts.



Link to Practice

Practitioners must always be wary of conflicts of interest arising between two or more clients. If a conflict of interest arises, the practitioner must decline to continue to act for all clients. You can see how difficult and inconvenient this would be for all parties if this had happened partway through a transaction.

All areas of law are at risk of conflicts of interest. We must look out for them throughout the transaction, not just at the beginning.

If you work in the conveyancing firm, you might be aware that a member of your accounts department might carry out a “**conflict check**” at the beginning of a matter. This might mean someone cross checking your firm’s database to see whether your firm has acted for the party on the other side of the transaction, for example.

But the obligation to look out for conflicts is a continuing process. Giving co-ownership advice on a purchase is an area where a conflict-of-interest might arise. You might advise your buyer clients, for example, that they should hold as tenants in common in unequal shares because one of them has contributed more money to the purchase price than the other. However, the party contributing less money might want to hold as joint tenants which means they would be equally entitled to the sale proceeds if the property is sold and thus might recover more money than they have actually contributed.

If both parties cannot agree on how the beneficial interest is to be held, a conflict of interest may arise.



Link to Practice

A word of warning about conflicts of interest...

Conflicts are difficult and as you can see, could give rise to quite difficult conversations with a client. They are also a matter of professional conduct which the qualified fee-earner dealing with the file should deal with.

CONTINUE

6.6.1 The importance of the declaration of trust and the will in relation to co-ownership advice

We discussed the document known as a declaration of trust in **Chapter 4**. You will remember that a declaration of trust is a document which sets out the circumstances of the purchase of a property by the co-owners and sets out how the sale proceeds should be divided between them as and when the property is sold or transferred. You will also remember that this document deals with the behind-the-scenes beneficial interest in the property and is not a matter of public record. It effectively sets out the private arrangements between the holders of the beneficial interest. This means that you will not send the declaration of trust to HMLR when you do your registration post completion.

When co-owners are given advice as to how the beneficial interest should be held, the conveyancer should also advise the co-owners to have a declaration of trust prepared. The conveyancer will usually offer this service.

You will remember that there is no survivorship with tenants in common. This means that on the death of a beneficial tenant in common, their share does not automatically pass to their surviving co-owner. The share of a deceased beneficial tenant in common will pass according to their will or intestacy if

there is no will. Thus in addition to advising co-owners to have a declaration of trust, they should also be advised to review existing wills or have new ones prepared.



It is important for the conveyancer to advise co-owners on the importance of wills whether they hold as joint tenants or tenants in common but it is particularly important to ensure that this point has been addressed if the parties are holding as tenants in common.

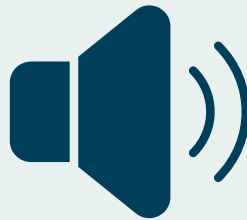


Link to Practice

Note that whilst the conveyancer should give co-owners advice about having a declaration of trust and wills prepared, the clients are not obliged to take that advice. Additional documents will incur additional legal fees and sometimes clients do not want to spend this extra money on additional legal documentation.

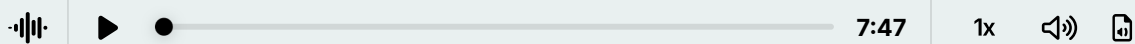
Clients are entitled to ignore their conveyancer's advice. However, many firms will ask their clients to send a signed letter to the firm

acknowledging that they are not taking their conveyancers advice.
Please ensure that you are aware of your firm's requirements in
this regard.



Law Explained

In this recording we will bring together various aspects of the law and practice relating to co-ownership, to see how they affect a particular illustrative situation.



Audio Transcript

In this recording we'll be bringing together various aspects of the law and practice relating to co-ownership, to see how they affect a particular illustrative situation.

For our purposes we'll imagine a situation concerning an unmarried couple called Ana and Steven. They are both in their 20s and neither has any children.

Let's start with their story in 2017.

Imagine Ana and Steven first met in late 2017, shortly after graduating from university. After living in a rented flat for a few months, they decided to purchase a house together in early 2018. The house they bought was a registered freehold property and the purchase price was £150,000. Ana contributed £120,000 from savings, as she had inherited money from her grandmother. Steven contributed £30,000 from the sale of some shares he owned.

Ana and Steven consulted a lawyer who acted for them in their purchase. The lawyer advised them fully about the different types of co-ownership and recommended that they held the property as

beneficial tenants in common in unequal shares. This advice was due to their differing contributions to the purchase price and the nature of their relationship. However, they told the lawyer they did not want to do this and that they wanted to be joint tenants. They said that they regarded their relationship as being stable and that they both wanted the other to automatically own the house if either of them died. The purchase was therefore completed on the basis that they were joint tenants.

So, let's consider what the co-ownership position was at that point in 2018, when they bought their house.

First of all, a word about Ana and Steven's instructions. In this case, they did not agree with their lawyer's recommendation. The choice about the type of co-ownership was ultimately one for Ana and Steven, but the lawyer would have wanted to check there was no conflict of interest between them, especially in view of their different contributions to the purchase price. It is also likely that the lawyer would have wanted to set out the advice given to them, in writing, and to ask the clients to jointly confirm that they fully understood the advice but that they nevertheless wanted to proceed as legal and beneficial joint tenants.

Although Ana and Steven would probably not have thought about it (and might have been very surprised to hear it!), their co-ownership automatically gave rise to a trust of land. They were actually both the trustees and beneficiaries under this trust of land. They were holding the legal estate as trustees, on behalf of themselves as beneficiaries under the trust. The legal estate was held by them as joint tenants because there is no other option in relation to the legal estate. It must be held as joint tenants in accordance with Section 1(6) of the Law of Property Act 1925. They had the choice of whether to hold the beneficial interests under the trust as beneficial joint tenants or as beneficial tenants in common and chose to own the property as beneficial joint tenants, even though their lawyer had recommended the opposite!

The TR1 transfer deed would have been completed (in a specific box on the form) to declare that Ana and Steven held the land on trust for themselves as joint tenants. When the Land Registry registered Ana and Steven as the new owners in 2018, they would both have been named on the register as the joint registered proprietors. The Land Registry would not have placed any Form A restriction on the register because they were beneficial joint tenants. The express declaration in the TR1 was conclusive evidence of their intentions. The fact they made unequal contributions to the purchase price was irrelevant.

The effect of being legal and beneficial joint tenants was that, if one of them died, the right (or doctrine) of survivorship would apply. The legal estate would automatically pass to the other so they would be the sole legal owner. Their beneficial interest would also pass automatically to the other so they would also be the sole owner in equity. The net effect is that the survivor would be the sole owner of the house. The property would not pass under either Ana or Steven's wills (if they had made wills) to anyone else. As joint tenants, they were regarded as owning the whole property jointly and did not hold any separate shares in it, despite the unequal contributions to the purchase price.

Now let's move forward to 2019.

Imagine that Ana and Steven were unfortunately having relationship problems. Ana thought it would be a good idea to make a will leaving her share in the house to her sister, as she no longer wanted it to

pass automatically to Steven if she died. The lawyer advised Ana that she would have to sever the beneficial joint tenancy if she wanted to leave her interest in the house to anyone else. When Ana told Steven about this, he refused to discuss it and would not agree to any action being taken. Ana therefore asked the lawyer to deal with it for her and the lawyer prepared a notice of severance which was served on Steven.

So, what did this achieve?

This is where it is particularly important to appreciate the difference between the legal and beneficial interests in the property. Severance only affects the beneficial interests in the property. It converts a beneficial joint tenancy into a beneficial tenancy in common. A beneficial joint tenant is allowed, at any time before their death, to sever the joint tenancy, so that they become a beneficial tenant in common. If severance does take place, it only affects that share. The share that is severed is in proportion to the number of beneficial joint tenants.

Severance can be achieved by various methods, but the main one is by service of a notice of severance on the other joint tenant or tenants, in this case Steven.

Ana and Steven would have remained as joint tenants of the legal estate, as the legal estate has to be held as joint tenants and can't be severed.

However, once the notice of severance had been served on Steven, the beneficial joint tenancy was converted into a beneficial tenancy in common as Ana had severed her share. This meant that Ana and Steven now held separate shares in the house. The doctrine of survivorship would no longer apply so, in the event of their death, their share would pass under their will or under the intestacy rules. Ana could therefore leave her share to her sister by making a will.

Note that, even though they initially contributed unequal amounts to the purchase price, the severance resulted in them holding equal shares (50/50) in the house. Remember, by choosing to be beneficial joint tenants, they were choosing to own all of the property together as a whole. Ana is losing out because of their earlier choice, as she contributed far more than Steven!

As they were now holding as beneficial tenants in common, the lawyer would have advised Ana to reflect this on the register of title, by applying to add a Form A restriction to the register. The effect of this restriction would be to prevent a disposition, such as a sale, by a sole survivor if one of them died.

This means that the survivor would have to appoint a second trustee to sell with them in order to ensure that any beneficial interests would be overreached.

For example, imagine that Ana died later in 2019, having left her share of the house to her sister in her will.

The legal estate would have passed to Steven by survivorship, as they were holding the legal estate as joint tenants.

However, Ana's beneficial interest would have passed to her sister under her will. This means that Steven would have been holding the property as sole trustee, on behalf of himself and Ana's sister, as

beneficiaries. If the property was sold, a second trustee would have to be appointed to sell with Steven. This would be to comply with the restriction and to ensure that Ana's sister's interest would not bind any buyer, but would be overreached and become an interest in the sale proceeds. The trustees (Steven and the second trustee) would have to pay Ana's sister her 50% entitlement out of the net proceeds of sale.

If Ana and Steven did not die, but were to sell the property jointly in the future, the restriction would have no effect as there would be no disposition by a sole proprietor.

So, you can see from the above that it's very important to consider the legal estate and the beneficial interests separately at every stage, when there is a co-ownership situation. You can also see the importance of advice to clients, about the choice and implications of the various types of co-ownership when they purchase a property.

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 3 questions in this knowledge check.

1. How many trustees must a purchaser pay the purchase price of land which is subject to a trust of land to in order to overreach the beneficial interests?

- ☐ a. One
- ☐ b. Four
- ☐ c. Two
- ☐ d. Three

SUBMIT



Complete the content above before moving on.

2. Which of the following sets of **unities** is required for a joint tenancy to exist?

- ☐ a. Possession, Intention, Trust, Tenure
- ☐ b. Possession, Interest, Time, Title
- ☐ c. Purpose, Investment, Term, Transfer

SUBMIT



Complete the content above before moving on.

3. Which of the following correctly completes the Form A restriction that applies to a tenancy in common?

- ☐ a. 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.
- ☐ b. No disposition by a **single** 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.
- ☐ c. No disposition by a **sole** proprietor of the registered estate (except a trust corporation) under which **income** money arises is to be registered unless authorised by an order of the court.

SUBMIT



Complete the content above before moving on.

6.7 Chapter summary

(1) The joint ownership of land is known as “co-ownership”; this is where concurrent interests arise when people are entitled to possession of the land at the same time.

(2) **TLATA 1996** provides that whenever there is co-ownership, a trust of land arises automatically.

(3) The legal estate must be held as joint tenants who must be over the age of 18. A maximum of four trustees can hold the legal estate.

(4) Trustees look after the land and behalf of the beneficiaries; those holding a beneficial interest recognised in equity and have a right to the proceeds of sale.

(5) Beneficial owners can be any age.

(6) The beneficial interest can be held as joint tenants or tenants in common.

(7) Joint tenants each own the whole property and on the death of one, the share of the deceased passes automatically to the survivors by virtue of the doctrine of survivorship.

(8) Tenants in common each hold a notional share in the property which can be equal or unequal, and on the death of a tenant in common their share in the property will follow their will or the intestacy rules.

(9) The doctrine of survivorship does not apply to the tenancy in common.

(10) On a registered title the Form A restriction will denote that the beneficial interest is held as tenants in common; if there is no Form A restriction, the beneficial interest is held as joint tenants.

(11) The joint tenancy in equity can be brought to an end by severance which has the effect of converting the joint tenancy of the severed share into a tenancy in common.

(12) Overreaching is the legal mechanism whereby if the purchase price for a property is paid to two or more trustees, any behind-the-scenes beneficial interest is converted from an equitable interest in the land to an interest in the sale proceeds.

(13) If a testator wishes to leave a gift of owned property in their will, the practitioner drafting their will should ensure that the title reflects this wish.

(14) In conveyancing, co-owners should be advised as to the importance of a declaration of trust and the will; the conveyancer should be aware the possibility of conflict-of-interest when giving this advice.

You have completed Chapter 6.

EXIT