

Precedent 4: Explanation to clients (joint tenancy)

What shares will you have in the house?

If there is more than one of you, you must choose whether you are to be 'joint tenants' or 'tenants in common'.

If you are not married, you need a 'trust memo' setting out your respective rights (for instance, to demand a sale if you separate and one does not want to move, and setting out your rights if one of you dies or becomes bankrupt). I can let you have a specimen memo so you can see the sort of things you need to agree between you.

'Tenancy' in this context means 'holding', not that you have a landlord.

In either case the house will be registered in both your names, but:

Joint tenancy means that if one of you dies, the house will automatically go to the other, even if the one who dies has left it by will to someone else (in which case that part of the will will not take effect). This is usual for married couples, but a tenancy in common might reduce the inheritance tax when the survivor dies.

Tenancy in common is the opposite. In that case the share which each of you has in the house can be left by will. If you die 'intestate' (without leaving a will), your share will go to whoever is entitled under the rules governing intestacy (which may not be the person you expect).

Important: If you are to be tenants in common you must decide in what proportions you will own the house.

Either of you can change a joint tenancy into a tenancy in common by giving the other a note to that effect, but before doing so you should take legal advice.

Please tell me as soon as possible:

- Whether you are to be joint tenants or tenants in common, and, if the latter, what your respective shares will be.
- If you are not married.

Note: *This precedent should be updated to take account of civil partnerships.*