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A Guide to

Buying Together Wisely

- Understand the importance of putting your affairs in good order from the outset.
- Make you aware of the ups and downs of buying a property together.
- Let you know about the options available to protect your wealth.

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Buying a house together is an exciting time and the start of a brand-new chapter for you both. Of course, you cannot wait to get the keys and move in, however there are some important practical things to consider before you make such a big step.

This Guide will make you aware of the ups and downs of buying a house together and bring to your attention some important considerations.

We'd like to tell you Tom and Katie's story:

Tom and Katie met at University around 5 years ago. They decided to take the plunge and buy a first home together and have each been working hard to save money for a deposit. They have found a lovely property in a nice area for £200,000 and have spoken to their Financial Advisor about raising a mortgage for £120,000.

Katie has managed to save £25,000 and Tom has managed to save £20,000 (Katie has always been better with money than Tom!). In addition, Katie received an inheritance when her Aunt died of £20,000 and her parents also wish to give her £15,000 (aka the bank of Mum and Dad), Katie intends to use both sums towards the house deposit, so her contribution will be £60,000. Tom and Katie intend to make the mortgage repayments equally between them.

Katie's parents are worried that Katie might be vulnerable in the future if things do not work out with Tom (even though they adore him) and have suggested that she might want to find out how she can protect herself. Tom is keen to ensure that things are as transparent as possible to avoid future problems and wants to be fair to Katie.

What can Katie and Tom do?

Katie and Tom can set out how much each of them has contributed to their new home in a legally binding document called a '**Declaration of Trust**'.

The Declaration of Trust would set out the contributions made by each of them to the purchase price and anticipated contributions such as mortgage payments and other expenses and, importantly, how the value would be divided in the event of the breakdown of their relationship or even on the death of one of them.

The Declaration of Trust could also set out the contribution made by Katie's parents.

Declarations of Trust are very flexible and basically put your agreement to own the property together on a formal footing. It won't change the day to day ownership but it means you as the owners of the property will know where you stand if/when you sell.

In terms of the title deeds to the property, there are two ways to own joint property, called '**Joint Tenants**' or '**Tenants in Common**'.

- If Tom and Katie opt to own their new property as **Joint Tenants** then on the death of the first of them, the property would automatically pass to the surviving co-owner (this is sometimes referred to as the 'survivorship' rules).

- Given Tom and Katie are making unequal contributions to the purchase of the property then to complement the Declaration of Trust, they should hold the property as **Tenants in Common**. This would then allow Katie and Tom to gift their share of the property to persons of their choice in their Wills and protect family wealth.

Katie and Tom should also make **Wills** to make it clear what they would like to happen to their estate in the event of their early demise. The law does not recognise unmarried couples. When someone dies without leaving a Will, there are legal rules (known as **the intestacy rules**) which decide who benefits from their estate. Any husband/wife/civil partner is the main beneficiary, followed by children, parents and siblings. Cohabiting partners are not included in these rules so if Tom and Katie want to make provision for one another they need to do so by making a Will.

Tom and Katie should also consider whether they want life cover in place to pay off any mortgage liability on death of one of them.

If in the future Tom and Katie do decide to get married, then they should consider entering into a **Pre-Nuptial Agreement**.

What if Katie already owned her own property when she met Tom?

If Tom moves into Katie's home, then it is important that things are as transparent as possible to avoid problems in the future. They could look to enter into a '**Cohabitation Agreement**'.

In drawing up a Cohabitation Agreement it is crucial to take legal advice – especially in situations where one cohabitee may have more income or assets or is the owner of the property where they will both live. Cohabitation Agreements are drawn up when a couple choose not to marry, but want to regulate clearly their property rights and arrangements.

A Cohabitation Agreement usually covers:

- Personal property owned at the beginning of the period of cohabitation
- Financial outgoings including rent or mortgage payments and repairs
- Maintenance on separating (including child maintenance)
- Sharing or division of future property and financial assets.

Many couples choose cohabitation instead of marriage. However, English law treats unmarried couples very differently to married ones.

Should you or your partner decide to end the relationship you should be aware of the potential consequences that may arise.

The most common misconception about cohabiting is that the parties are protected by "common law" if they separate and property will be shared equally as if they were married, but this is not the case.

How can we help you?

Getting the right legal advice when buying your first home is essential. We can assist you with:

- Buying or Selling your home
- Advising on Stamp Duty Land Tax
- Drafting a Declaration of Trust to document your respective contributions
- Preparation of a Will to protect family wealth
- Advising on a Cohabitation Agreement or Pre-Nuptial Agreement

When you are buying your first home you will be excited and optimistic about the future, but it is also important to consider what the future might hold.

We aim to provide you with legal advice that is easy to understand and guide you through the process in an open and compassionate manner.

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For individual advice and assistance contact our Wills, Trusts and Probate Team to find out how we can help.

Disclaimer - This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated into the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.

Why choose Band Hatton Button?
We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying or selling a property.

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