



# /guide

## Your questions answered

## PROPERTY IN DIVORCE: WHAT YOU NEED TO KNOW

**T**his Stowe guide explains types of legal ownership of property, and what to consider when dividing property in divorce.

If you're considering divorce you will need to consider the division of your belongings, including your family home. However, this isn't always as straight-forward as you might expect. Lawyer, [Jennifer Hudec](#), tells us more about the key considerations and what you need to do to protect your property rights.

Who could have predicted at the start of the pandemic, the spike in house prices that we are now seeing. Whilst it is true that no one has a crystal ball when it comes to the property market, there are certainly some common pitfalls which can be predicted and should be addressed when it comes to your property upon divorce.

### Legal ownership

First, it is important for any divorcing couple to have a clear understanding of how they own their property.

There are two ways that a person can own a property:

**Joint Tenants** – this means that you and your spouse both own **100% of the property**. It also means that if you die before your house is sold/ your financial matters are concluded, your entire share in the property will pass to your spouse in full at first instance, irrespective of whether or not you have left your share to someone else under your Will.

**Tenants in Common** – this means that you and your spouse own **distinct shares of your property**. The default position for tenants in common is that each owns 50% of the property in full. However, this is not always the case and you should check the copy of the Transfer Deed that you signed during the conveyancing process (TR1) to check. In this instance, if you were to die before your house is sold/your financial matters are concluded, then your entire share in the property will pass to whomever you have left your share to under your Will.

You may want to consider 'severing' your title if you are planning to divorce your spouse and you currently hold your property as joint tenants. When you sever a title, your joint tenancy will change to tenants in common on a 50:50 basis.

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## What if the house is in my spouse's name?

If your family home is in your spouse's name, but not your name (regardless of whether you pay towards the mortgage or the bills), it is important to protect yourself legally on the title. If you do not take steps to make the Land Registry aware that you have an interest in the property, then your spouse may be able to sell the house without your knowledge/ consent, especially if you no longer live there.

If this is the case, then you should consider registering your **Matrimonial Homes Rights** against the property, which involves telling the Land Registry that you are married to the owner of the property and therefore you have an interest in the property, because it is your family home. This will prevent your spouse from selling the property without your knowledge and consent.

If the property is not your family home, but rather a rental property, or indeed a property that you have a beneficial interest in, then you cannot register your matrimonial homes rights against it. You can, however, tell the Land Registry about your interest in another way: through registering a **Notice or a Restriction against the Title**. Again, this will warn any potential buyers that you have an interest in the property which needs to be addressed before sale if your spouse tries to market the property without your knowledge.

## High rise flats

If you live in a high rise flat, or you own such a property as part of an investment portfolio, you need to be aware that the property's structure (specifically cladding) can seriously affect the value of the plot and your ability to sell as many of these properties have been classified as unmanageable at first instance.

You may need to consider whether a formal valuation should be conducted on the property to take the structural issues into consideration before you engage in negotiations about how you are going to divide your assets.

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit [www.stowefamilylaw.co.uk](http://www.stowefamilylaw.co.uk)

In addition, you may need to make enquiries/obtain an EWS1 (External Wall System form that independently certifies that your building meets UK Gov standards) before you consider selling the property. This is also vital if you are thinking about buying your spouse out as this could affect your remortgage.

## Escalating ground rent

If you own a leasehold property, then it is worth instructing a conveyancer to briefly review your lease before engaging in any financial negotiations or indeed and valuations (as 9/10 valuers will assume good Title and will not do this ground work as part of the valuation process).

Again, escalating ground rent can have a serious impact upon the valuation of the property and mortgage potential, so it is essential that this is addressed first, before agreeing to a sale or transfer of the property.

## Help to buy scheme

If you bought your property with the assistance of the **Help to Buy Scheme** with your spouse, you must remember that you require the Scheme's authority for only one party to be released from the agreement, which is vital if you are considering making/ accepting an offer to transfer the property to one or other of your sole names.

If you are calculating the equity, be mindful that the scheme will require repayment before any sale/ transfer and this will have an impact upon the funds that are left in the property to be divided. There could also be repayment fees to consider.



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