

Your Legal Questions



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Q. My partner and I jointly own a house but we have decided to separate. I want to keep the house and buy out my partner's share. This seems straight forward - is it?

A. Where residential property is jointly owned and one co-owner buys the other's share the property is transferred to the remaining owner. The transfer deed will specify the price paid for the share. Stamp Duty Land Tax is payable where that figure exceeds £175,000.00. Where there is no existing mortgage and the share is to be paid for with cash this can be straight forward. Matters become more complicated when mortgages are involved.

Where a new mortgage is to be used to pay off the existing mortgage and to buy your partner's share this will be treated as a new purchase. Your solicitor will have to carry out the same level of investigation as with a purchase so the lender is satisfied that the property is 'good and marketable'. You should bear in mind that with house prices falling the level of existing borrowing could exceed the value of the house and you may struggle to obtain sufficient funds to buy out your partner's share and clear the mortgage.

An alternative would be for the property to be transferred to you but leaving the existing mortgage in place. If approved by the lender this would avoid having to obtain new borrowing but you should be aware that the price stated in the transfer deed will be the amount of the outstanding mortgage plus the price for your partner's share. If this is greater than £175,000.00 then Stamp Duty Land Tax will be payable.

As you can see what might appear to be straight forward may be more complicated than first imagined.

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