

Property Law

with Jan Curtis of MCP



Q I have a very large garden with my house which is now too big for me to manage. I'd like to sell part of the garden as a building plot to give me some income and to reduce the area of my garden to a more manageable size. I've mentioned this to my neighbour – a large local landowner from whom I purchased my property – and have been told there is a 'covenant' on my deeds preventing me from having more than one house on my land. I'm very keen to proceed but what do I do?

A A covenant in its most general sense is a solemn promise to engage in (or refrain from) a specified action and is a type of contract in which one party makes a promise to another party to do (or not do) something.

In property law the term is used for conditions regulating the use of land. The neighbouring landowner (in selling you your property) wanted to keep some control over what you do with your property so you don't do anything he doesn't approve of or which may adversely affect his retained land. He therefore imposed 'restrictive' covenants on your title which (amongst others) state only one property can be built on your land. Unless you can reach an arrangement with your neighbour to 'release' this covenant you will not be able to proceed.

If agreement can be reached with your neighbour to 'release' this covenant, this will be done by a deed which your solicitor can prepare for you. The neighbouring landowner will almost certainly charge you a sum of money as a condition of the release being granted.

The deed can then be registered after it is completed at the Land Registry on your title and any Solicitor acting for the buyer of the plot will then know there are no concerns relating to a possible action for breach of covenant.

Q My partner and I have been married before and each have grown up children. We now want to sell both our houses and buy one in our joint names to move in together. We're concerned to ensure our respective children inherit what they would have received if we'd remained in separate properties, and we are also worried that if one of us dies the survivor will be able to continue to live in the property and won't be thrown out of their home. We also want to safeguard our respective contributions to the new property (which are not equal) so that if our relationship fails we can take out what we put in.

A Legally speaking, whenever more than one person owns a property a trust arises. Each and every co-owner has a 'power of sale' which means that one co-owner can insist the property is sold at any time even if the other refuses. Co-owners have a choice between owning as 'joint tenants' or 'tenants in common'.

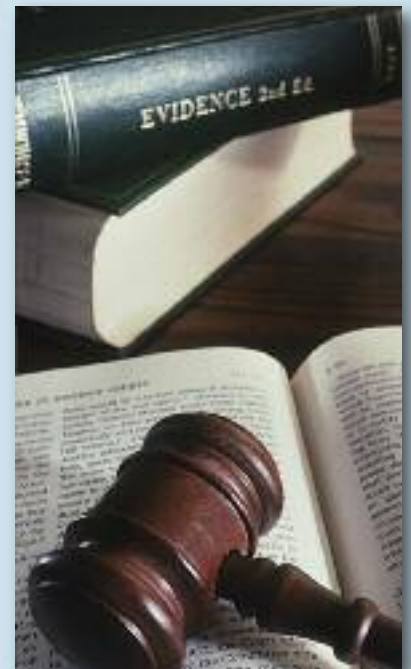
There are important differences between co-owners who are joint tenants and those who are tenants in common and these should be discussed with your Solicitor – but in your circumstances, it would be appropriate to hold as tenants in common and this could be specified either quite simply in the document transferring the property to you at greater length in a formal trust deed.

Since you are not married, it's also advisable to have a declaration of trust deed which sets out each co-owner's responsibilities and entitlements, for example the fact that you have contributed different proportions towards the purchase price.

It's also very important that you both have Wills which your Solicitor can prepare for you. These will specify what will happen to your respective shares in the property upon your death(s). Provision can be made in your Will(s) for the survivor to be allowed to continue to live in the property if required.

Finally, your Solicitor can arrange for a restriction to be registered on your title at the Land Registry which will notify any prospective purchaser of the property that the property cannot be sold by just one of you – which will again afford protection to yourselves and all your families.

JAN CURTIS is part of the property department at the King's Lynn office of Metcalfe Copeman & Pettefar where she specializes in residential property law. Jan has had a long association with the Firm, first joining in 1970 subsequently taking time out to raise children – and has been back in the fold since 1996.



The questions and answers on this page are intended to provide general information only. Every effort is made to ensure that the law is correct at the time of publication but no duty of care is assumed to any person and no liability accepted for any omission or inaccuracy. Each case is different and so you should always seek our specific advice.

MCP Solicitors

28/32 King Street, Kings Lynn, Norfolk, PE30 1HQ

Tel: 01553 778101

Fax: 01553 766807

Web: www.mcp-law.co.uk