Equity Release Update

May 2010

Tenants in common - A problem in reserve!

Readers of previous issues will be familiar with the legal expression "tenants in common" in relation to deeds ownership, and you will all know that joint borrowers owning as tenants in common is no barrier to taking out equity release.

However, Just Retirement are currently looking into the impact of owning as tenants in common on the reserve/drawdown facility following first death. Why, I hear you ask?

The issue they are rightly concerned about is that the first to die's share of the property will have passed under their Will and:

1. May have been given to someone other than the surviving borrower (i.e. immediately to their children); and
2. The surviving borrower may have been given a limited right only, i.e. a life interest, to protect assets from residential care fees.

Under 1 & 2 the survivor is not entitled to the capital of the first to die's share of the property and, as such, if they continued to access the reserve/drawdown then they would be accessing capital from the first to die's share of the property that they were not entitled to.

It is therefore vital that when seeing clients who have a reserve facility they are advised that if they own as tenants in common and their Wills do not give the property to each other outright then the survivor will not be able to access the reserve.

It is also important to point out to clients who own as tenants in common and who are leaving their estates to each other that for the survivor to access the reserve they will need to obtain a Grant of Probate to enable the deeds to be transferred into the sole name of the survivor. This can take time and will cost several hundred pounds to achieve. If they owned as joint tenants all that is needed is a death certificate to transfer over the deeds.

Just Retirement have spotted the problem - I am sure the others will soon follow suit.

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If you would like further information please contact:

Peter Barton

T: +44 (0)1884 203037
F: +44 (0)1884 203237
p.barton@ashfords.co.uk