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# Domestic Abuse & Joint Tenancies

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# Why is the issue of joint tenancy important?

- Somewhere to live
- On-going liability
- Vehicle for transfer/exchange
- Social Housing
- Right to Buy
- Rights of perpetrator

# Programme



- 1. Overview of alternative issues**
2. Injunction proceedings
3. Allocation schemes
4. Homelessness support
5. Possession claims
- 6. Features of Joint Tenancy**
7. Methods of termination

# Alternative tenancy issues

- Injunctions
  - non-molestation injunction
  - occupation order
  - exclusion order
- Re-housing
  - social housing allocation: Part 6, Housing Act 1996
  - homelessness: Part 7, Housing Act 1996
- Recovery of property from perpetrator
  - Domestic violence/other discretionary grounds
  - Where no security of tenure

# Injunction proceedings

- Anti-social Behaviour, Crime & Policing Act 2014, Part 1
- Non-molestation order: Part 4 Family Law Act 1996
- Occupation order: Part 4 Family Law Act 1996
- Closure orders: Part 4 ASBCPA 2014



# Allocation Schemes

- Localism Act 2011 reforms
- **“Improving Access to Social Housing for Victims of Domestic Abuse in Refuges or Other Types of Temporary Accommodation”** (November 2018)
  - “The Secretary of State therefore strongly encourages all local authorities to exempt from their residency requirements those who are living in a refuge or other form of safe temporary accommodation in their district having escaped domestic abuse in another local authority area.” (para. 19)
  - “The 2012 guidance goes further and makes it clear that authorities should consider giving additional preference within their allocation scheme to people who are homeless and require urgent rehousing as a result of domestic abuse.” (para. 23)
  - “By applying the medical and welfare reasonable preference category to ensure that those who are provided with shelter in a refuge or other form of temporary accommodation are accorded appropriate priority for social housing, local authorities may also reduce the incentive for victims of abuse to seek homelessness assistance and thereby reduce the pressure on homelessness services.” (para. 28)



- Domestic Abuse Bill 2019-21

- **Code of Guidance, Part 21**

- “**21.27** The reasonable steps that a housing authority might take to help an applicant to retain or secure safe accommodation might include provision of sanctuary scheme or other security measures, assistance to find alternative accommodation, or help to access legal remedies such as injunctions where these might be effective. Single people might also be assisted to access supported housing, or helped to gain more support from family and friends through the intervention of the housing authority.”
- “**21.31** When dealing with domestic violence and abuse within the home, where the authority is the landlord, housing authorities should consider the scope for evicting the perpetrator and allowing the victim to remain in their home. However, where there would be a probability of violence if the applicant continued to occupy their present accommodation, the housing authority must treat the applicant as homeless and should not expect them to remain in, or return to, the accommodation. **In all cases involving violence the safety of the applicant and their household should be the primary consideration at all stages of decision making as to whether or not the applicant remains in their own home.**”

## Homelessness support



- Needed to move perpetrator
- Domestic Abuse may be treated as “anti-social behaviour”
- It may be a breach of tenancy
- Can use domestic violence ground (see next slides)

## Possession claims

# Domestic Violence Ground Ground 2A, Schedule 2 Housing Act 1985



The dwelling-house was occupied (whether alone or with others) by a married couple, a couple who are civil partners of each other...or a couple living together as if they were a married couple or civil partners and—

(a) one or both of the partners is a tenant of the dwelling-house,

(b) one partner has left because of violence or threats of violence by the other towards—(i) that partner, or (ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and

(c) the court is satisfied that the partner who has left is unlikely to return.

# Domestic Violence Ground Ground 14A, Schedule 2 Housing Act 1988



The dwelling-house was occupied (whether alone or with others) by a married couple, a couple who are civil partners of each other or a couple living together as if they were a married couple or civil partners and—

- (a) one or both of the partners is a tenant of the dwelling-house,
- (b) the landlord who is seeking possession is a non-profit registered provider of social housing, a registered social landlord or a charitable housing trust or, where the dwelling-house is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, a profit-making registered provider of social housing,
- (c) one partner has left the dwelling-house because of violence or threats of violence by the other towards—(i) that partner, or (ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and
- (d) the court is satisfied that the partner who has left is unlikely to return.

For the purposes of this ground “registered social landlord” and “member of the family” have the same meaning as in Part I of the Housing Act 1996 and “charitable housing trust” means a housing trust, within the meaning of the Housing Associations Act 1985, which is a charity.



# Features of Joint Tenancies (1)

- Maximum of 4 joint tenants
- Trustee Act 1925 s.34(1); Law of Property Act 1925 s.34(2)
- Joint and several liability
- Only one needs to occupy as only or principal home to retain security of tenure
- **Secure tenancies:** Housing Act 1985, section 81
- **Assured tenancies:** Housing Act 1988, section 1(1)(b)
- Can be transferred
- Matrimonial Causes Act 1973, section 24 & Family Law Act 1996, section 53 (Sch 7)
- Crago v Julian (1992) 1 WLR 372



- Any **one** tenant can end the tenancy without knowledge or agreement of others (i.e. NTQ):
  - Hammersmith & Fulham London Borough Council v Monk [1992] 1 A.C. 478
- Difference between period + fixed term tenancies
- Sole tenancy – security of tenure may persist upon separation
  - Family Law Act 1996, section 30(4)

# Features of Joint Tenancies (2)



## Methods of termination

- Notice to quit
  - Only for periodic tenancies
  - Minimum 28 days/1 month
- Surrender
  - Only possible if all tenants surrender
  - Fixes landlord with sub-tenancies



# Surrender

- Express (by deed) or by operation of law
- Cannot be conditional: Woodfall, 17.012
- “Surrender and yield up” wording
- Operation of law akin to estoppel

“A surrender by operation of law does not depend on the intention of the parties; it takes place independently, and even in spite of intention. The foundation of the doctrine is estoppel. There is no estoppel by mere verbal agreement; there must be in addition to such agreement some act done which is inconsistent with the continuance of the lease. Similarly, the giving of a bad notice to quit is no surrender, although there may be a surrender if the notice is subsequently acted upon.” (*Woodfall*, 17.018)



(a) the landlord accepted the keys “without prejudice”

(b) the landlord accepted the keys by mistake

(c) the landlord attempted unsuccessfully to re-let the premises

(d) the landlord evicted squatters after abandonment by the tenant but did not intend to accept a surrender

(e) the landlord changed the locks of the premises in order to secure them against intruders, while maintaining a claim against the tenant for rent

(f) the landlord carried out necessary repairs and attempted to let the premises, although when the landlord did re-let, the tenant’s liability for rent ceased as from the start of the new letting

(g) the landlord accepted rent from a third party occupier other than the tenant with no intention of effecting a surrender

(j) the tenant vacated the premises and told the landlord that it could take her to court

# No surrender



# Break clauses

- Must be operated by all joint tenants: Hounslow London Borough Council v Pilling [1993] 1 W.L.R. 1242

# Secure Tenancies (Victims of Domestic Abuse) Act 2018

- Not yet in force
- Only periodic tenancies where:
  - (a) they need to leave or have left their home to escape domestic abuse and are being re-housed by a local authority, or
  - (b) they are a joint tenant and wish to remain a tenant of their social home after the perpetrator has left or been removed and the local authority decides to grant them a further sole tenancy in their current home.



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## Question and Answer session

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