was dead. Davis told Mills to phone the police and then to call back. Davis testified that when Mills called back she said that her mother had been "badgering her and badgering her," so she took a gun out to scare her, so that her mother would stop. She said her mother had hit her on the nose, that she (Mills) had blood on her nightgown and that it "didn't look good."

The officer who responded to the call testified that Mills had said that she and her mother were practicing self defense techniques while she held the handgun and that she slipped and the gun went off.

An expert testified that the victim had some contusions on her hands and on one arm, and a bruised right fist.

Mills testified at trial that while she and her mother were unpacking boxes they heard noises outside. She took the gun out to show her mother how to fire the gun, but her mother grabbed her arm and hit her in the nose. Mills, fearing that her mother might harm herself with the gun, held onto it. The gun went off accidentally and her mother fell to the ground. Mills further testified that she told Davis that her mother was "battering her" not "badgering her."

[1] Defense counsel requested an instruction on justifiable use of deadly force including self defense at the jury charge conference. The court denied this request. This was error. As one court has said:

> It is not the *quantum* or the *quality* of the proof as to self-defense that determines the requirement for giving the charge. If *any* evidence of a substantial character is adduced, either upon cross-examination of State witnesses or upon direct examination of the defendant and/or his witnesses, the element of self-defense becomes an issue, and the jury, as the trier of the facts, should be duly charged as to the law thereon, because it is the jury's function to determine that issue.

Kilgore v. State, 271 So.2d 148, 152 (Fla. 2d DCA 1972).

[2] The state contends that an instruction on self defense would have been inappropriate because defendant's testimony was inconsistent with such a defense. *Pimentel v. State*, 442 So.2d 228 (Fla. 3d DCA 1983). However, " 'inconsistencies in defenses in criminal cases are allowable so long as the proof of one does not necessarily disprove the other.' " *Mellins v. State*, 395 So.2d 1207, 1210 (Fla. 4th DCA 1981) (quoting *Stripling v. State*, 349 So.2d 187, 191 (Fla. 3d DCA 1977), *cert. denied*, 359 So.2d 1220 (Fla.1978)). In the present case, proof that the shooting was accidental, as Mills maintains, does not disprove that Mills was acting in her own self defense. Therefore, the trial court should have instructed the jury on self defense. Accordingly, we

Reverse and remand for a new trial.

SCHWARTZ, C.J., and NESBITT, J., concur.

HENDRY, J., dissents.

Bonnie Marie TINSLEY, n/k/a Bonnie Marie Burke, Appellant,

v.

Calvin W. TINSLEY, III, Appellee.

No. 85-2223.

District Court of Appeal of Florida, Third District.

June 24, 1986.

Upon sale of marital home, husband moved for clarification of modified final judgment which had required husband to pay all mortgage payments, insurance and taxes on home. The Circuit Court, Dade County, James C. Henderson, J., determined former husband was entitled to credit from wife's share of proceeds to reim-

burse husband for wife's share of mortgage payments, insurance and taxes on home. Wife appealed. The District Court of Appeal, Jorgenson, J., held that trial court order was not impermissible modification of rights of parties, but rather, was merely clarification of well-settled law.

Affirmed.

1. Divorce ⇐254(2)

Trial court's postjudgment decree declaring that husband was entitled to credit from wife's share of proceeds from sale of marital home to reimburse husband for wife's share of mortgage payments, insurance and taxes on home was not impermissible modification of rights of parties established by final judgment which required husband to pay all mortgage payments, insurance and taxes on home, but rather, was merely order clarifying well-settled law that spouse who makes payments on home held jointly as tenants in common is entitled to credit.

2. Divorce ⇐321½

Mutual obligations of former spouses as tenants in common of property formerly held as tenants by entirety to pay charges upon property is distinct from any obligation which may result from trial court's final judgment granting dissolution of marriage, and therefore, to require one spouse, by his payments on house, to increase equity of other spouse, is impermissible. West's F.S.A. § 689.15.

3. Divorce ⇐321½

Fact that possession of marital home is awarded to one spouse as part of alimony or maintenance has no effect upon ownership by parties who hold property as tenants in common, and right to reimbursement of party paying charges against property is only postponed until property is sold.

4. Divorce ⇐321½

When final judgment of divorce requires only one spouse to make mortgage payments until such time as house is sold and is silent as to whether spouse who pays mortgage is to receive credit, right to credit arises by operation of law.

5. Divorce ⇐252.5(3), 253(4)

For trial court to order one party to make total mortgage payments on former marital home without receiving credit in return requires basis in record for relieving other spouse of his obligation and must be explicitly stated in final judgment.

Hershoff & Levy and Jay M. Levy, Miami, for appellant.

Ira L. Dubitsky, Miami, for appellee.

Before SCHWARTZ, C.J., and BASKIN and JORGENSON, JJ.

JORGENSON, Judge.

The wife in this marriage dissolution proceeding, Bonnie Tinsley, appeals from a post-judgment order entered in favor of the husband, Calvin Tinsley, on his motion for clarification.

Initially, the final judgment provided that the parties would each pay half of the mortgage payments, insurance, and taxes on the home. Bonnie would have exclusive use and occupancy of the home until her remarriage, at which time the house would be sold and the proceeds distributed equally between the parties. Bonnie moved for a rehearing, seeking, among other things, an award of lump sum alimony and an increase in maintenance and support. In response, the trial court modified the final judgment by requiring that Calvin pay all of the mortgage payments, insurance, and taxes on the home. The modified final judgment contained no provision for Calvin to receive a credit from Bonnie's share of the proceeds from the sale of the home. Bonnie remarried in 1984, and the house was sold in 1985. Calvin moved for a clarification of the modified final judgment. He sought a post-judgment decree by the trial court that he was entitled to a credit from Bonnie's share of the proceeds to reimburse him for her share of the mortgage payments, insurance, and taxes on the home. The court granted his motion and Calvin was given credit for $12,141.46.

[1] On appeal, Bonnie concedes that had Calvin appealed the modified final

judgment he would have been entitled to receive credit for her share. She contends, however, that the trial court's order is not a clarification of the judgment but rather is an impermissible modification of the rights of the parties. We disagree. The trial court's order merely clarified what is well-settled law. Calvin made the mortgage payments and, as a matter of law, is entitled to credit.

[2] When spouses own property as tenants by the entirety, upon divorce they become tenants in common. § 689.15, Fla. Stat. (1985). As such, the tenants have joint responsibilities, *Abella-Fernandez v. Abella*, 393 So. 2d 40 (Fla. 3d DCA 1981), and "have a mutual obligation to pay the charges upon the property," *Singer v. Singer*, 342 So.2d 861, 862 (Fla. 1st DCA 1977); *Mintz v. Ellison*, 233 So.2d 156, 157 (Fla. 3d DCA 1970); *see Maroun v. Maroun*, 277 So.2d 572 (Fla. 3d DCA 1973). This statutory property obligation is distinct from any obligation which may result from the trial court's final judgment granting dissolution of the marriage. *See Spikes v. Spikes*, 396 So.2d 1192 (Fla. 3d DCA 1981). It is impermissible, therefore, to require one spouse, by his payments on the house, to increase the equity of the other spouse. *Kohn v. Kohn*, 423 So.2d 575 (Fla. 1st DCA 1982); *Rubino v. Rubino*, 372 So.2d 539 (Fla. 1st DCA 1979); *Singer*.

[3] Thus, a person who makes mortgage payments on a home jointly held with the ex-spouse as tenants in common is entitled to a credit for the ex-spouse's share of the ownership expenses. *Wertheimer v. Wertheimer*, 487 So.2d 90 (Fla. 3d DCA 1986); *Price v. Price*, 389 So.2d 666 (Fla. 3d DCA 1980), *rev. denied*, 397 So. 2d 778 (Fla.1981); *Rutkin v. Rutkin*, 345 So.2d 400 (Fla. 3d DCA 1977). The fact that possession of the marital home is awarded to one spouse as a part of alimony or maintenance has no effect upon the *ownership* by the parties who hold the property as tenants in common, *see Thomas v. Greene*, 226 So.2d 143 (Fla. 1st DCA), *cert. denied*, 234 So.2d 117 (Fla.1969), and the right to reimbursement is only postponed until the property is sold, *Whiteley v. Whiteley*, 329 So.2d 352 (Fla. 4th DCA 1976).

[4, 5] Accordingly, when a final judgment requires only one spouse to make the mortgage payments until such time as the house is sold and is silent as to whether the spouse who pays the mortgage is to receive credit, the right to a credit arises by operation of law. *Cf. Tate v. Tate*, 432 So.2d 601 (Fla. 4th DCA 1983) (no dispute that spouse entitled to credit; however, court remanded to have right to credit made explicit in judgment). Though it was not necessary for the trial court to do so, it did not err in clarifying what was implicit in the final judgment—that Calvin was entitled to a credit from Bonnie's share of the proceeds. This is not to say that a trial judge cannot order one party to make the total mortgage payments without receiving credit in return. However, to do so, there must be a basis in the record for relieving the spouse of his obligation, *see Hendricks v. Hendricks*, 312 So.2d 792 (Fla. 3d DCA 1975), and it must be explicitly stated in the final judgment.

Affirmed.

YELLOW CAB MAXI-TAXI COMPANY, The Miami Dade Yellow Cab Company Home of the Yellow Cab Company, Inc. and Norman Shulman, Appellants,

v.

DADE COUNTY, a political subdivision of the State of Florida and Red Top Sedan Service, Inc., a Florida corporation, Appellees.

No. 85-2341.

District Court of Appeal of Florida, Third District.

June 24, 1986.

Rehearing Denied July 22, 1986.

Action was brought by cab companies to enforce Home Rule Charter requirement