

Ownership of Property

As you are probably aware there are two methods by which joint owners hold a property. The first is by a Joint Tenancy and the second as Tenants in Common. Below is an explanation of the two different methods.

Joint Tenants

Where a property is held by a couple as Joint Tenants, upon the death of the first the property will automatically pass to the survivor. The share of the one who dies will not form part of his or her Estate and will not be affected by the terms of any Will. In effect both parties own the whole property rather than a divisible share, which is why on the death of one of the Joint Tenants the property belongs wholly to the survivor.

Tenants in Common

The effects of holding a property as Tenants in Common means that each person has a fixed share of the property e.g. 50/50, 80/20 etc. Under this form of ownership, the property will not automatically pass on the death of one to the survivor and the share of the person who dies **will** form part of his or her Estate and can bequeathed to a third party. This means that it is necessary for a Will to be made to dispose of each party's separate share of the property. Where there is no Will the deceased person's share of the property will pass in accordance with the Intestacy Rules; i.e to their next of kin.

Where a property is held as Joint Tenants, that Joint Tenancy can be severed by a simple document called a Notice of Severance. Assuming that you and your spouse hold your property as Joint Tenants, you must now consider whether or not to sever the Joint Tenancy. If you do, then your share of the Tenancy will no longer automatically pass to your spouse upon your death and vice versa. Instead you may each nominate someone else to receive your share of the property when you die. As previously stated, this should be done by a Will.

However, you should be aware, that even if you sever the Tenancy and nominate someone other than your spouse to receive your share of the property, your spouse may still have claims against your share under the Inheritance (Provision for Family Dependents) Act 1975.

We would be happy to prepare the relevant documents to effect severance of the Joint Tenancy. If you instruct us to do so, we will prepare a Notice of Severance, which will then be served upon your spouse and, together with the evidence of service, registered at the Land Registry.