

Severing your joint ownership

There are two ways in which you may jointly own property. The first is known as **beneficial joint tenants** and the second as **tenants in common**. To own as **beneficial joint tenants** means that on the death of either joint owner the surviving owner becomes the sole legal owner of the whole property.

To own as **tenants in common** means that each joint owner of the property has a separate share in it, so that on the death of either joint owner that deceased's person's share will go to the person named in the deceased's Will or via his/her intestacy. This person would not necessarily be the deceased's cohabitee and could, for instance, be the deceased's separated legal spouse or the deceased's children from a previous relationship.

Many couples own their home, particularly for married couples the matrimonial home, as **beneficial joint tenants**. However, where there are matrimonial difficulties, which may or may not lead to a separation and ultimately end in divorce proceedings, a severance of the **beneficial joint tenancy** is sometimes desirable.

Such a severance would result in a **tenancy in common** being created, which will ensure that should either owner die, the surviving one will not automatically become the sole owner of the whole of the matrimonial home. As a result of having severed the joint tenancy prior to their death the deceased owner will have acquired a specific share in the home. Provided the deceased made a Will, the deceased's share would go to the person named as the beneficiary of it in the Will. If no Will had been made then the share would go to the persons entitled under the rules of intestacy.

Thus severing the beneficial joint tenancy whilst married and not making a valid Will, will result in the spouse receiving a significant share of the value of the property or even all of it, depending upon its value in comparison with the then prevailing laws relating to inheritance intestate.

If the **beneficial joint tenancy** is not severed at the time of relationship difficulties then should one or other of the joint owners die, the survivor will own the matrimonial home outright which, because of the relationship problems, may not have been the wishes of the deceased owner.

It will be understood that this can either be beneficial or detrimental depending upon who dies first.

If you would like to ensure that your share of the matrimonial home goes to someone other than your spouse, then we can assist you in the severing of **your beneficial joint tenancy**. This is a quick and simple procedure. At the same time we can help you in completing a Will so that a provision is made for your share in the matrimonial home to be left to the person or persons you nominate rather than to your spouse or partner. However, please bear in mind that if having severed the tenancy your spouse/partner were to be the one to die first, you will no longer automatically inherit his or her share of the property. You must, therefore, give this careful thought before making a final decision.

If you do sever your **beneficial joint tenancy** and then or later matrimonial proceedings are started by either you or your spouse, the severance will have **NO EFFECT** on the outcome of the matrimonial proceedings. The court has the power to look at who owns what and change existing

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property ownership rights. But an application to the court for financial provision including a property adjustment order **DOES NOT** automatically sever the ownership – a formal notice of severance is required.

This information sheet has been prepared to highlight some key issues relating to beneficial joint tenancies. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2015 and may be affected by subsequent changes in the law.

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