

Family Law Department

Why You Should Consider Severing Your Beneficial Joint Tenancy

There are two ways in which you may jointly own property (i.e. a house and or land) with your spouse or partner. You might own it as '**beneficial joint tenants**' or as '**tenants in common**'.

The effect of owning a property as '**beneficial joint tenants**' is that on the death of either of the joint owners, the surviving spouse or partner becomes the sole legal owner of the whole property irrespective of any provisions made in the deceased person's Will.

The effect of owning a property as '**tenants in common**' is that each joint owner of the property has a separate share in it so that on the death of either of the joint owners that deceased person's share will go to the person named in the deceased's Will. Such a person would not necessarily be the deceased's spouse or partner and could be, for instance, the deceased's child from a previous relationship.

Many people own the matrimonial home as **beneficial joint tenants**. However, where there are difficulties in a relationship which may or may not

lead to a separation (and ultimately a divorce if the **beneficial joint tenants** are married), a severance of the **beneficial joint tenancy** is often desirable. Such a severance would result in a **tenancy in common** being created which will ensure that should either of the joint owners die, the surviving one will not automatically become the sole owner of the whole of the property. As a result of having severed the joint tenancy, the deceased joint owner would have acquired a specific share in the property and provided the deceased made a Will at the time of severing the joint tenancy, the deceased's share would go to the person named in the Will. If no Will had been made then the share would go to the persons entitled under the rules of intestacy.

If the **beneficial joint tenancy** is not severed when there are relationship difficulties, then should one or other of the joint owners die, the survivor will own the property outright which, because of the relationship problems, may not have been the wishes of the deceased spouse

or partner.

We do not have a crystal ball and so we cannot predict if your spouse or partner is likely to meet an untimely end! However, we **can** assist you in the severing of your **beneficial joint tenancy** which is a quick and simple procedure. Most people sever the joint tenancy at the same time as making or revising their Wills. We can deal with this too, so that provision is made for your shares in the property to be left to the person or persons you nominate rather than to your spouse or partner.

If you do sever your **beneficial joint tenancy** and then or later proceedings are started by either you or your spouse or partner, the severance will have **no effect** on the outcome of the proceedings.

If you think you should be contemplating the severance of your **beneficial joint tenancy** or would simply like more advice on this subject, please contact the person dealing with your matter who will be pleased to discuss your particular case with you.



For further advice or information please contact a member of our Family Law Team at enquiries@mayowynnebaxter.co.uk
Offices at Brighton 01273 775533, Eastbourne 01323 730543, Lewes 01273 477071 and Seaford 01323 891412

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