

## Why you should consider severing your Beneficial Joint Tenancy

There are two ways in which you may jointly own property with your spouse. 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 spouse 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. This person would not necessarily be the deceased's spouse and could be, for instance, the deceased's children from a previous relationship.

Many husbands and wives own 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 spouse 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 the deceased spouse will have acquired a specific share in the matrimonial home, 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 at the time of matrimonial difficulties then should one or other of the joint owners die, the survivor will own the matrimonial home outright which, because of the matrimonial problems, may not have been the wishes of the deceased spouse.

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. However, please bear in mind that if having severed the tenancy your spouse 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.

This information sheet has been prepared to highlight some key issues relating 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 July 2004 and may be affected by subsequent changes in the law.

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March 2007  
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