

Information Leaflet

What Property is Yours To Give by Will

giving your instruction

When preparing to make your Will, you first need to know what you own, what its worth and what you owe.

But before you do this it is important to understand the rules governing property ownership. The principle reason for knowing this is that you can't leave property that you do not own.

If you are single, have no minor children and own all your property outright, with no shared ownership, you will have little problem. You're free to leave your property to whomever you wish and to whatever institutions you wish.

However if you own any property in shared ownership - such as joint ownership or ownership in common - you will need to understand how this affects your right to give away this property by your Will.

joint ownership

Where property is held by more than one person as JOINT OWNERS in equity, on the death of one joint owner his interest passes by survivorship to the surviving joint owner(s).

Jointly owned property will pass to the survivor no matter how short the period of survivorship may be, despite anything said in the Will. For this reason it may be appropriate to sever a joint ownership *inter vivos* (an unconditional gift made prior to death) see Ownership in Common.

Apart from the obvious, the family home, some other types of property pass on death independently of the terms of the Will.

Nominated property, Life Assurance Policies, Pension and Death in Service Benefits, Joint Bank accounts.

ownership in common

Where land or property is held by more than one person as OWNERSHIP IN COMMON, the share of each owner in common passes on his death under his Will

Each owner in common is free to leave his beneficial interest (his share) to whoever he wants, however this can cause problems for the survivor particularly in the case of the matrimonial home.

The surviving spouse (or partner) could be forced to sell the property to settle the gift entitlement to the beneficiary. A simple solution to this is to give the survivor a 'life interest' in the property, enabling them to reside in the house as long as they live. It is only when the survivor dies that the beneficiary can benefit from the gift.

severing an ownership agreement

To sever a joint ownership to ownership in common requires only that one party notify the other as to their intention, the other party signs in agreement.

Both parties sign a Notice of Severance of Joint Tenancy, in effect notifying each other of the intention to sever the existing ownership agreement.

Where the property is subject to a mortgage or other loan, the mortgagee or lender should be notified, and the severance registered on the deeds through the local Land Registry Office.

Your Will Writer, Denise Hodgson will be able to advise you further on the action that you need to be taking, and many will undertake to complete the entire procedure on your behalf.

summary

Joint tenants

- ◆ **property passes to survivor regardless of instructions in the will**
- ◆ **property will pass irrespective of survivorship period**
- ◆ **poor use of nil rate inheritance tax allowance**

Tenants in common

- ◆ **can help to reduce inheritance tax liability by utilising each allowance effectively**
- ◆ **ability to 'gift' your share of the property**
- ◆ **the family home may be your main legacy to your children - severance of tenancy can help protect the property from future unforeseen situations**
- ◆ **a life interest in your share will protect your spouse from having to sell**

SPECIAL NOTE :

The types of ownership referred to within this leaflet are more commonly known as JOINT TENANTS and TENANTS IN COMMON.

It is for ease of understanding that they have been referred to as JOINT OWNERSHIP and OWNERS IN COMMON

If you require any further information, please do not hesitate to contact:

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