

The importance of severing joint tenancy during family law proceedings

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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If you and your partner own property together, it is important to advise your family law lawyer of this when first providing instructions. Amongst other things, your lawyer will usually perform a title search to ascertain if the property is held as joint tenants or tenants in common. How your property is owned has a significant impact on property settlement negotiations.

The difference between joint tenants and tenants in common

If your property is held as joint tenants, then there is a right of survivorship tied to the property. This means that upon the death of one of the joint tenants, the interest in the property of the deceased joint tenant automatically transfers to the remaining joint tenant.

If your property is held as tenants in common, then there is no right of survivorship, and the deceased's share of the property passes as per their wishes documented in their Will.

You can learn more about the differences between these two types of ownership in our blog, "Should I purchase property as joint tenants or tenants in common".

Why should I sever a joint tenancy during family law proceedings?

One of the primary reasons for severing a joint tenancy after separation is to protect any interest you personally hold in the property should you die prior to your family law property settlement being finalised.

When you sever the joint tenancy, the full interest in the property will not automatically go to your former partner but rather, you will be able to choose what happens to your interest, by including it in your Will. For this reason, amongst others, we always strongly advise you to update your Will as soon as practicable after separation. You can learn more about this in our blog, "When should I review or update my Will?"

To sever a joint tenancy, amongst other steps, you will need to complete a Transfer Severing Joint Tenancy and lodge it with the NSW Land Registry Service and provide notice to the other party that this has occurred.

What is a Transfer Severing Joint Tenancy?

It is more common than not for married or de-facto couples purchasing property to purchase the property as joint tenants (rather than tenants in common). For separating couples who do own property as joint tenants, it is advisable for a Transfer Severing Joint Tenancy to be completed and lodged as a safeguard in the event of your death prior to finalising your family law property settlement.

Lodging this document does not affect your family law settlement. It simply severs your joint tenancy, meaning that you and your partner will then each hold a 50% share in the property as tenants in common. You can then direct who is to receive your 50% share of the property upon your death by way of your Will.

Crucially, lodging this document does not mean that you are entitled to 50% of the real property (for example, the family home) in your family law matter. You may both hold 50% of the property as tenants in common or joint tenants, but this does not represent your entitlement pursuant to *Family Law Act 1975*.

Your family law property matter will still need to be negotiated, documented and lodged with the Family and Federal Circuit Court of Australia. During that process, Consent Orders will be agreed to or ordered by a Judge advising how the property is to be dealt with. For example, one party may retain the property or the property may be sold and the proceeds of sale divided between the parties, as agreed between the parties or as ordered by a Judge.

Get help from a family lawyer

The importance of lodging a Transfer Severing Joint Tenancy with the NSW Land Registry Service is to safeguard your share of the property in the event of your death before your family law matter is completed.

If you feel that protection is important to you or if you require any other assistance in relation to your family law matter, please contact our office to discuss how we can assist you with this safeguard.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

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