



What Property Is Yours?

To Give By Will

A Public Information Leaflet



The Society of Will Writers & Estate Planning Practitioners

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Why 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 it's 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 cannot 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 are free to leave your property to whoever 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 automatically 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 and despite anything said to the contrary in the Will. For this reason it may be appropriate to sever (split) a joint ownership *inter vivos* (during lifetime) see Ownership in Common.

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

These include 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 co-owner in common passes on his death under his Will or intestacy.

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 (or family) home.

The surviving spouse/civil partner/unmarried 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 remain living in the house as long as they wish or for the remainder of their lifetime . It is only when the survivor dies that the intended named beneficiary in the Will can benefit and take the gift of the house (or the proceeds of the sale).

Severing an ownership agreement

To sever a joint ownership to ownership in common requires one party to notify the other as to their intention to do so, with the other party/parties signs in agreement.

Both (or all) co-owners sign a Notice of Severance of Joint Tenancy, in effect notifying each other (or all co-owners) of the intention to sever the existing ownership status.

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

Your Will Writer 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 as part of their service.

Summary

Joint tenants

- **property passes to survivor regardless of instructions in the will**
- **property will pass irrespective of survivorship period**

Tenants in common,

- **ability to 'gift' your share of the property upon your death**
- **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 TENANCY and TENANTS IN COMMON.

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

Your local Society Member is:

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