

Property Ownership Joint Ownership or Tenancy in Common

An information sheet for clients of Knapps Lawyers.



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It is important to understand the distinction between joint ownership and the other ways property can be shared.

Any family asset protection plan should involve a careful consideration of the manner in which the ownership of property is shared.

In the past, it has generally been the practice for principal family assets to be owned jointly by the husband and the wife, especially the family home. It is important to understand the distinction between joint ownership and the other ways in which property can be shared. **Joint Ownership** means that in the event of death of one joint owner, the ownership of the property is transferred to the other joint owner(s). This is called “survivorship” and happens regardless of any provisions which might be included in the wills of the joint owner(s).

One of the main advantages of joint ownership and the effect of survivorship has been the simplifying of the administration of many estates. In respect of a family home that is held in joint ownership, on the death of either spouse the ownership of the home passes to the surviving spouse entirely without the need for a formal grant of administration of the deceased's owner estate being obtained.

An alternative to joint ownership is the form of ownership known as **Tenancy in Common**. Ownership as a tenancy in common means that each owner is treated as having a separate legal share. The ownership of the share of a tenant in common, in the event of his or her death, does not automatically pass to the other owners but would go according to the terms of his or her will.

Whilst there have been obvious advantages in the simplicity of joint ownership, it is also recognised that joint ownership and survivorship have significant disadvantages from the point of view of asset protection. The automatic inheritance of a valuable family home by a surviving spouse can place the whole value of that asset in jeopardy if the surviving spouse is required to undergo long-term hospitalisation or subsidised care.

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In many cases the extreme effects of asset testing can be modified by arrangements to convert ownership of property from joint ownership to tenancy in common with appropriate changes to the wills of the property owners. In most cases the co-owners will wish their spouse to continue to have the normal rights of occupation of the family home. A common arrangement will involve a jointly owned home being transferred to ownership as a tenancy in common in equal shares.

Together with this each spouse can complete a will which provides for the surviving spouse to enjoy all of the rights of occupation which go along with the half ownership for his or her lifetime. However, the capital share of the deceased spouse is left to the beneficiaries (usually children) on the death of the surviving spouse.

The effect of this alternative form of ownership, together with the appropriate provisions in the will, is that only a one-half share of the family home can be protected if the surviving spouse requires long-term subsidised care.

One advantage of this form of transaction is that it does not require a long-term gifting programme as the property owners are already equal owners. The only thing that has changed is the form in which the ownership is recorded, along with the changes to the wills.

The distinction between joint ownership and tenancy in common can also apply to the other assets such as bank accounts, other cash investments, superannuation funds, etc. There is no reason why a couple cannot undertake similar steps with regard to assets other than the family home.

For a more complete means of protection you may wish to consider setting up a discretionary Family Trust. In its simplest form a Trust is a means by which you separate the ownership of an asset from its use and enjoyment. The asset will belong to the Trust but you will be able to use and enjoy it but not own it. By not owning the asset, it can not be taken from you and nor can you be penalised for such ownership.



If you would like further information on any of the points raised above, please contact us.

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