



Severing joint tenancy: how a blended family can share in the inheritance of property

Help! We are a blended family and want to leave the house to both sets of children.

What's the problem?

Most commonly when a couple purchase a property, they purchase it as joint tenants. This results in the property being subject to the right of survivorship, meaning if one joint owner dies, their share is absorbed into the share of the surviving joint owner.

For example, if a husband and wife own a home as joint tenants and the husband dies, the wife will receive her husband's share of the home, regardless of what is written in his Will.

If the husband and wife each have children from previous relationships, this can result in the deceased's partner's children having no entitlement to the property at all. An example is where the surviving partner does not include the deceased partner's children in their Will or commences a new relationship which is later subject to family law proceedings.

What's the alternative?

Land may also be owned by two (or more) persons as tenants in common. This situation involves the owners holding distinct shares in the same piece of land, known as undivided shares. While an undivided share grants the owner rights to the whole property (i.e. the land itself is not physically divided), it may be dealt with by an owner during their lifetime or disposed of in a Will.

In the above example, if the husband and wife own their home as tenants in common in equal shares, they each own a distinct 50% share in the property and have the legal right to occupy or use the whole property with the other. If the husband dies, his 50% share in the property will pass under his Will (or by operation of law if he doesn't have a Will).

In other words, the husband can leave his share in the property to his children in a blended family, rather than to his wife. This reduces the risk of his children not inheriting any share of the property.

In this situation, it is also worth considering including a life interest or a right of residence in the husband's Will, which would allow the surviving wife to live in the property for a specified period (or for life), before the husband's share in the property passes to the husband's children.

What's the process?

If you are purchasing a new property as joint owners, you can instruct your conveyancer that you wish to purchase it as tenants in common. Before doing so, we recommend you obtain legal and financial advice regarding your personal circumstances.

If you already own a property jointly, it is possible to change the ownership to tenants in common. This process is known as severing a joint tenancy.

The process involves lodging a form with Land Services SA to notify it of the change of tenancy, effectively transferring the property from the existing owners as joint tenants to the existing owners as tenants in common. Usually, no money changes hands between the parties.

A joint tenancy may be severed with the consent of both parties, or unilaterally (i.e. without notice to the co-owner).

Land Services SA lodgement fees will apply and stamp duty may or may not be payable, depending on the individual circumstances of the transfer.

How can Andersons help?

For advice about joint property ownership, and to ensure your wishes can be carried out following your death, we recommend contacting our experienced [commercial law](#) and [estate planning](#) team. You can call us on 8238 6666 or email enquiry@andersons.com.au.