



CORNERSTONE WILLS

BRIEFING NOTE – PROPERTY TENANCY

Background

- Most people know if their property is owned by just one of them, or both of them. Most, however, do not know if the solicitor or conveyancer drew up the deeds as “Joint Tenants” or “Tenants In Common”.
- As “Joint Tenants”, irrespective of what is in the Will, on death the property passes to the other Joint Tenant(s) automatically via the “law of survivorship” and not the laws of intestacy or the Will. The last one alive gets the lot and the property then passes according to their Will (or intestacy laws).
- As “Tenants In Common”, the other tenants do not automatically get the deceased’s share of the property. Their Will or Intestacy Law determines what happens to it.

Considerations for Unmarried Couples

Joint Tenancy

- At simultaneous death, all joint property will pass under the “law of survivorship” from the elder tenant to the younger tenant and will then pass according to the Will or Intestacy Law of the younger tenant. Especially with intestacy, this could result in the entire property passing to the family of the younger tenant, regardless of any contribution to the purchase or maintenance of the property that the family of the elder tenant had made. Also, only the younger tenant’s Nil Rate Band is used against the property.

Tenancy In Common

- When one of the tenants dies, their share will pass according to their Will or Intestacy Law. Under intestacy, this could result in the surviving tenant having to sell the property or find the funds to buy back half of the property from the beneficiaries of the deceased’s estate.

Considerations for Couples

There are three scenarios where couples might not want the surviving partner to inherit.

Inheritance Tax Mitigation –By holding the property as “Tenants In Common”, on first death half the property can be left to a discretionary trust and used to mitigate inheritance tax. Also, on simultaneous death, each half of the property will pass into the respective estates of the deceased enabling each Nil Rate Band to be used.

Estate Preservation - As the major asset for most people is their property, holding property as Tenants In Common enables the property to be left to children with a lifetime use to the surviving partner – thus preventing the survivor (or their new spouse) from squandering the children’s inheritance. Note that estate preservation is not conducive to mitigating IHT as it would be considered a life interest in 2nd spouse’s estate.

Protection Against Care Costs – By holding the property as “Tenants In Common” and drafting the Will appropriately, half the value of the property can be protected from care costs, should the survivor need to go into care. But be aware of rules on intentional deprivation.

Cornerstone Wills

E-mail: info@cornerstonewills.co.uk

Web: www.cornerstonewills.co.uk

Windsor Office

PO Box 2681, Windsor, SL4 2ZG
T: 01753 842068 M: 07971 197587

Farnham Office

PO Box 420, Farnham GU9 9ZQ
T: 01252 725014 M: 07775 901850