

Determination of Ownership - for IHT Planning

Beneficial Joint Tenants

If a property is owned as beneficial "Joint Tenants" then this means that the whole property and the proceeds of its sale belong to both owners as one. They do not have separate shares each – they both own the whole thing. Neither of them have a separate share which they can sell or leave in a will. If one person dies then the survivor becomes the owner of the whole property. This happens automatically without any further formality. This method of ownership suits most married couples but by no means all. Even married couples should consider their position and requirements - this can be particularly relevant when making a will and dealing with Inheritance Tax planning

Tenants in Common

This method of ownership still means that the property is owned jointly however, each joint owner has a distinct share. Those shares can be either equal or unequal depending upon the agreement that is reached between the owners. If the property is owned in this way and one owner dies then the deceased owners share will pass in accordance with the terms of that persons will or under the rules of intestacy if no will has been made. If a property is owned as tenants in common then it would be prudent for there to be a separate deed setting out those shares in the property and how the proceeds of sale would be divided if the property was sold. Such a document is usually called a 'Trust Deed' or a 'Declaration of Trust'

How do you find out how you own a property?

The answer to this is that you need to look at the title deeds. Most house deeds in England or Wales have a registered title. This means that there will be a record of ownership at HM Land Registry. Acton Financial Management has already contacted the HM Land Registry and encloses a copy of your information.

Find the area headed 'Proprietorship Register' (See below). If you look in that area there may be an entry which reads something similar to:

TITLE NUMBER: CH1234567

B PROPRIETORSHIP REGISTER

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

TITLE ABSOLUTE

1 (29.10.1984) Proprietor(s): %ANDREW NOTHER% and %AMANDA NOTHER% of 1 AnyStreet , Anywhere, *Anytown* AT1 2BC.

2 (04.10.2005) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 26 August 2005 in favour of referred to in the Charges Register.

The key wording is:

RESTRICTION: No disposition ... by the proprietor of the land/registered estate... is to be registered

If the above entry is there, then you are Tenants in Common. If it is not, then you are beneficial Joint Tenants

If the title to the property is unregistered (which is now becoming quite unusual) then you need to look at the conveyance to the two joint owners. The wording is less specific than with registered land but at some point there should be a clause which states that the property is conveyed to the purchasers ".....as joint tenants" or ".....as beneficial joint tenants" or ".....as tenants in common".

Changing the way you own the property

If you are beneficial joint tenants and wish to become tenants in common (and remember that you need to be tenants in common for the IHT Discretionary Will Trust to be effective) then the procedure depends on whether the property has a registered title or an unregistered title.

Most property in England and Wales has a registered title and if this is the case then you need to register a Restriction at HM Land Registry. In order to do this you have to complete a Land Registry Form RX1.

Acton Financial Management have already completed this form for you and ensured that the correct wording has been used throughout.

Once the **RX1** form and the **Mutual Severance of Joint Tenancy** document has been signed as indicated you need to return it to the address below in the pre-paid envelope and Acton Financial Management will send it to the appropriate HM Land Registry Office.

ACTON Financial Management charges an additional fee of £55 over and above the cost of the Nil Rate Band Will, for dealing with the severance of Joint Tenancy on your behalf