



If you and your partner own a property together and you've separated or are intending to do so, it's important to inform your Family Law advisor of this when you first contact them to obtain advice about your situation. Your lawyer will usually perform a title search to ascertain whether the property is held as Joint Tenants or Tenants in Common as the manner in which your property is owned can have a significant impact on the property settlement in the event that one party dies during the proceedings.

The difference between Joint Tenants and Tenants in Common

The decision to own a property as Joint Tenants or as Tenants in Common is made when a property is purchased and is noted on the transfer document lodged to transfer the title or the property into the new owner's name. If your property was bought by you and your partner as Joint Tenants, then a right of survivorship applies in regard to the ownership of the property. This means that upon the death of one of the joint tenants, their interest in the property passes to the surviving joint tenant regardless of their separation and the ongoing property dispute between them. This right of survivorship applies even if the deceased joint tenant has made a new Will leaving their share of the property to another person.

If your property was bought with your partner as Tenants in Common, then there is no right of survivorship, and the deceased's share of the property passes as per their wishes as documented in their Will.

Why should I sever a Joint Tenancy during Family Law proceedings?

One of the primary reasons for severing a joint tenancy after separation is to protect any interest you personally hold in the property should you die prior to your Family Law property settlement being finalised.

When you sever the joint tenancy, the right of survivorship in favour of your partner ceases and your interest in the property will not "automatically" pass to them on your death. Provided you have a Will, your interest in the property will pass to the person or persons you've chosen to receive it in the event of your death. For this reason, we strongly advise you to consider severing the Joint Tenancy of any property you own with your partner when you separate and to also update your Will as soon as practicable after separation.

Severing a Joint Tenancy

If you decide to instruct your lawyer to sever the Joint Tenancy of a property you own with your partner, they will prepare a document known as a 'Transfer Severing Joint Tenancy' and arrange for you to sign it and then lodge it with the NSW Land Registry Services (LRS). If you have a mortgage registered on the title of the property, they will also advise your lender of the steps you are taking to sever the Joint Tenancy. Once the LRS registers Transfer Severing Joint Tenancy a new title deed will be issued for the property noting that you and your partner advising them that this has occurred.



Lodging a Transfer Severing Joint Tenancy does not affect your Family Law property settlement. It simply severs the Joint Tenancy ownership of the property, meaning that you and your partner will then be noted on title as each holding a half share in the property as Tenants in Common. Crucially, the registration of a Transfer Severing Joint Tenancy does not mean that each party is entitled or limited to a 50% share of the property in terms of the Family Law property settlement, as a party's respective entitlement in the property and other assets will be determined pursuant to Family Law Act 1975.

Your Family Law property settlement will still need to be negotiated and approved by the Family Court or determined by it in the event that the parties can't reach a negotiated settlement. During that process, consent orders will be agreed to, or orders will be made by a Judge determining how the property and all of the parties' other assets are to be distributed between them. For example, one party may retain the property, or the property may be sold, and the proceeds of sale divided between the parties, as agreed between the parties or as ordered by the Court.

At Bateman Battersby we have a number of experienced Lawyers that specialise in Family Law Property Settlement matters including those where property forms part of the asset pool. If you need help sorting out who gets what when a marriage or relationship breaks down, please call [Oliver Hagen](tel:0247315899) or [Ken Gray](tel:0247315899) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au if you require further information or assistance.