

PUBLICATION

Disposition of Jointly Held Assets via Will

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Most spouses in Alberta jointly own their matrimonial home. Unknown to many spouses is that they can own the matrimonial home jointly in one of two ways: as tenants in common or as joint tenants.

In a joint tenancy each party owns 100% of the home by right of survivorship. That is to say that if one spouse dies the other spouse retains 100% of the ownership of the home.

Tenants in common means that each spouse owns their share of the home and each spouse may dispose of their share by a Will. For example, Spouse A may own 50% of the home and Spouse B may own the other 50%. Tenants in common may also unequally share ownership of the matrimonial home if specified on the title to the property.

Typically, spouses will choose to own their home as joint tenants. In doing so, they can rely on the fact that, should Spouse A pass away, Spouse B will solely become the owner of the home. This 'right of survivorship' allows the surviving spouse to be the sole owner of the home without probating the Will of the deceased spouse.

However, problems can arise when spouses separate, particularly if the spouses have yet to settle the division of matrimonial property from a separation, but they have updated their Wills. For example, Spouse A may want to leave his or her 'share' of the house to someone other than their estranged spouse. If the home is held in joint tenancy, the right of survivorship will prevail and Spouse B will still get the house upon the death of Spouse A. This is true even if Spouse A named another person as a beneficiary of the house in their Will. But, if the house is owned by the spouses as tenants in common, then the right of survivorship does not apply and Spouse A can distribute their share of the house to whomever they please in his or her Will, subject to dower interests and any competing claim by Spouse B to divide the home as part of the matrimonial property. Further, a beneficiary of the interest in the home can potentially force the sale of the home, leaving Spouse B in an unfortunate situation.

There are several ways to sever joint tenancy in Alberta. Most involve the consent of both owners, but it is also possible to unilaterally sever the joint tenancy. This can be useful if a separated spouse wishes to leave their share of the property to a specific beneficiary in his or her Will. To unilaterally sever a joint tenancy, please contact our office since a separated spouse or co-owner will have to comply with the legal requirements in the Land Titles Act and the Law of Property Act. If Spouse A has an intention to sever the joint tenancy, and

properly serves written notice of the intention to sever on Spouse B, the Land Titles Office may then register a transfer of the home from joint tenancy to tenants in common notwithstanding the lack of consent by Spouse B. Under the Law of Property Act, conveyance of property held by Spouse A as a joint tenant to Spouse A as a tenant in common is then valid upon registration of the transfer.

The ability to unilaterally sever a joint tenancy can take some separated spouses and co-owners by surprise. Occasionally, Spouse B might not realize the importance of the written notice of intent to sever, only recognizing the significance when Spouse A dies. The home that Spouse B ordinarily would have owned by right of survivorship under joint tenancy may suddenly be shared with a surprise beneficiary.

If you have questions about severing joint tenancy or disposing your share of the matrimonial home by Will, or if you are a spouse or co-owner involved in a property dispute, please contact any member of the Wills and Estates Group.