

NEWS REPORT 3 – 24 July 2009

JOINTLY HELD PROPERTY ON THE ISLE OF MAN

There are two ways to hold land jointly in the Isle of Man.

The first method is as a 'tenant-in-common' with the other joint owner. As tenants-in-common you own a defined share of the property (often a specified percentage) and you can deal with your share independently from the other joint owner. This means that you can sell your share, or leave it in your will. This is often suitable for a business type relationship.

The second method is as a 'joint tenant' with the other joint owner. As a joint tenant you own the whole property between you and your shares are entwined. In this case you cannot sell your interest, and on your death the other joint owner automatically inherits your interest automatically without having the property coming into your estate. This is usually only suitable for close family type relationships.

On occasion a person may wish to move from joint tenant to tenant-in-common so as to have control over what happens on their death.

In the Isle of Man you cannot sever a joint tenancy into a tenancy-in-common without the other party's agreement, so it was commonly thought that a mutual deed or a Court Order was required.

This is in contrast with the position in England and Wales where a joint tenancy can be severed by either party just by giving notice to the other party.

It would now appear that a notice of severance by one party alone *can* be sufficient, depending on the surrounding circumstances.

In a recent judgment it was determined that the recipient of a notice of severance acted in a manner that appeared to show that he was in agreement with the change – albeit he later stated he did not actually agree and thought the notice to be invalid. It was held that it was the mutual behaviour of both parties established a severance, the notice was simply evidence of one party's intentions.

This effectively endorses the position that a joint tenancy can become a tenancy-in-common if the parties appear to agree, regardless of whether formal deeds have been executed.

Given the potential for dispute arising from this it is suggested that all dealings with land have an Advocate's input, to ensure the intentions are reflected in the deeds.

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