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SEVERANCE OF JOINT TENANCY

Property can be owned in one of two ways: jointly or as tenants in common.

If property is owned jointly, the law of survivorship applies. Upon the death of one joint owner, the property as a whole will automatically pass to the survivor(s). Typically, couples will own property in this manner.

If property is owned as tenants in common, two or more people are entitled to occupy the whole of the property without exclusive possession. Upon the death of one of the owners, their share of the property will pass to their Estate.

In some circumstances, such as divorce or separation, it may be necessary to sever a joint tenancy.

Legal Severance

Where parties are agreeable, formal legal severance can be achieved by producing the original Certificate of Title to the Land Titles Office of Victoria, to register the transfer of a share of the property to each party.

Severance in Equity

In the event that the other joint owner(s) or third parties, such as banks and mortgagees, fail to provide consent to legally sever the joint tenancy, you can proceed to unilaterally sever your share. Equity will sever the tenancy where your conduct shows a deliberate intention to divide the property. This can be achieved by completing the necessary documentation and serving it on the other parties for submission.

Estate Planning

Where you proceed to sever your joint tenancy, it is imperative that you have a valid and binding Will that accurately reflects your wishes, to ensure that your share of the property passes to those you wish to benefit on your death. Our office can assist you with your estate planning, including reviewing your current Will or preparing new documentation as required.

Costs

Our costs in preparing the necessary documentation to achieve severance in equity are $880 plus normal disbursements relating to searches. Where legal severance can be achieved by lodging the necessary documentation with the Land Titles Office of Victoria, our costs are $1,200 plus normal disbursements relating to searches and lodging fees.