When parties in a relationship become estranged and are contemplating separation, it is important that consideration is given as to how the parties' hold their interests in assets, such as bank accounts and the matrimonial home.

In Queensland it is possible to own property as ‘joint tenants’ or as ‘tenants in common’ (where more than one person owns an interest in real property together). If your interest is held as ‘joint tenants’, you share equally the ownership of the property and have equal undivided rights to keep or dispose of the property. If your property is held as ‘tenants in common’, you hold a defined share of the property separate from the other owner/s. This might be an equal share or a defined percentage such as 50% each or 30% and 70%. If you are unsure how your property is held, a search of the title with the land registry may be conducted on your behalf.

If your interest is held as joint tenants, it is important to consider how your ownership may impact upon your estate planning. It is possible to ‘sever’ the joint tenancy, such that the property is held as ‘tenants in common’ in equal shares rather than as joint tenants. If title to real property is held as ‘joint tenants’ and a party passes away prior to either a financial agreement being completed or proceedings are commenced in the Family Court of Australia, title shall pass to the surviving joint owner pursuant to the rules of survivorship. That is, the surviving owner becomes the sole owner of the property, regardless of the intentions expressed in the deceased party’s will.

Changing your interest from ‘joint tenants’ to ‘tenants in common’, shall ensure that your interest in the property will be considered a separate interest pending finalisation of your property settlement, and distributed pursuant to the terms of your will. You do not require your partner’s consent to sever the joint tenancy, there is an exemption for the payment of Transfer Duty on the transaction and severance of the joint tenancy does not trigger any adverse taxation consequences.

Once property settlement proceedings have been commenced in court, the risk of former partners holding properties by joint tenancy is reduced. This is because the Family Court of Australia may consider the value and make up of all of the assets of the parties to the relationship irrespective of whether the legal title to property is held as joint tenants. The Family Court of Australia may make property settlement orders, even after the death of one of the parties. However......

If you consider severing a ‘joint tenancy’ over real property is an appropriate strategy for you to complete, we strongly recommend that you also review the whole of your estate planning...
arrangements including but not limited to your will, nominations of beneficiaries on superannuation and life insurance policies and appointments of enduring and general powers of attorney.

Should you have any questions surrounding this issue, please contact our Family Law Team.

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