

Section 1: Why Sever a Joint Tenancy?

1.1 The Problem with Joint Tenancy

If you own your home as joint tenants, you cannot leave your share to anyone other than the surviving joint tenant. The right of survivorship overrides your will. This creates several problems:

- You cannot leave your share to your children from a previous relationship
- You cannot use your share for Inheritance Tax planning (e.g., to utilise your nil-rate band)
- If the surviving owner remarries and then dies, the entire property could pass to the new spouse's family, cutting out your children entirely
- You cannot create a life interest trust over your share
- You have no control over what happens to your share after your death

1.2 When You Should Sever

Severance is particularly important in the following situations:

- You are in a second marriage or relationship and have children from a previous relationship
- You want to use a life interest trust to protect the surviving partner while preserving your share for your children
- Your combined estate exceeds the IHT nil-rate band (£325,000 per person, or £500,000 with the residence nil-rate band) and you want to plan efficiently
- You want to protect your share from the surviving owner's potential future creditors, care home fees, or new partners
- You want the flexibility to leave your share to a charity or other beneficiary

1.3 What Happens When You Sever

When a joint tenancy is severed:

- The right of survivorship is extinguished
- Each owner holds a distinct share (usually 50/50, but it can be specified differently)
- Each owner can leave their share by will
- A restriction is placed on the Land Registry title to protect the tenancy in common

Severance does not affect the legal title. Both owners remain on the title register as legal co-owners. What changes is the beneficial (equitable) ownership, i.e., who is entitled to the value of the property.

Section 2: The Legal Basis

2.1 Law of Property Act 1925, Section 36(2)

The right to sever a joint tenancy is established by section 36(2) of the Law of Property Act 1925, which provides:

"...where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity..."

This means that severance can be achieved simply by serving a written notice on the other joint tenant(s). No court order is required. No consent from the other joint tenant is needed.

2.2 Key Legal Points

- The notice must be in writing
- It must express a desire to sever the joint tenancy immediately (not at some future date)
- It must be served on the other joint tenant(s)
- Service by recorded delivery is strongly recommended (so you have proof of delivery)
- Severance takes effect immediately upon service of the notice, even if the other joint tenant objects
- The other joint tenant does NOT need to agree, severance is a unilateral act

Section 3: Notice of Severance, Template (Form SEV)

This is the notice you must serve on the other joint tenant(s) to sever the joint tenancy.

NOTICE OF SEVERANCE OF JOINT TENANCY

To: [INSERT FULL NAME OF OTHER JOINT TENANT]

Of: [INSERT ADDRESS OF OTHER JOINT TENANT]

From: [INSERT YOUR FULL NAME]

Of: [INSERT YOUR ADDRESS]

Date: [INSERT DATE]

Property: [INSERT FULL ADDRESS OF THE PROPERTY]

Title Number: [INSERT LAND REGISTRY TITLE NUMBER]

Dear [INSERT NAME],

I hereby give you notice, pursuant to section 36(2) of the Law of Property Act 1925, of my desire to sever the joint tenancy in respect of the above-named property.

The effect of this notice is that from the date of service of this notice, we shall hold the property as tenants in common in equal shares, and the right of survivorship shall no longer apply.

Each of us will be free to deal with our respective share as we see fit, including leaving it by will.

I intend to apply to the Land Registry for a restriction to be entered on the title register to reflect the change in the nature of our ownership.