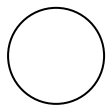
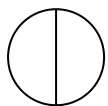


ASSET PROTECTION TRUST

There are two ways that property can be owned jointly, either as joint tenants (which is the most common form of ownership between spouses) or as tenants in common. To understand how these types of joint ownership differ it might be helpful to think of the property as a “cake”.



Where the cake has not been “cut” neither of the joint owners can deal with their share of the property separate from the other joint owner. There is no clear division as to who owns what and if one of the joint owners were to die then the survivor would then own the whole of the undivided property. Where property is jointly owned in this way it is not possible to specify in your Will that you wish someone other than the surviving joint owner to have your share in the property when you die.



Where the property is held as tenants in common it may be helpful to think of a cake that has been “cut” into two distinct shares. Where property is held as tenants in common the share of a joint owner does not automatically pass to the surviving joint owner on death. The deceased joint owner’s share will pass in accordance with the terms of their Will (or if they have not made a will then in accordance with the intestacy rules).

Where property is held as tenants in common it is possible to leave your respective half shares in the property to someone rather than each other, for example, into a trust set up by your Will. The trust can provide for the survivor of you to have a lifetime right to occupy the home and can even make provision to allow the survivor to move to a smaller or more suitable property. This would mean that if the survivor later needed residential care only their half of the sale proceeds of the property would be available to meet those costs as the other half would be protected within the Will trust.

Where a property is owned by joint owners as joint tenants it is necessary to “sever the joint tenancy” so that the property is then held as tenants in common in order to leave the respective shares in the property to someone other than the surviving joint owner on death, for example, into a Will trust as mentioned above. This is done by service of a notice and by registering the change with the Land Registry.

Where a Will trust is created it is possible to provide that the capital of the trust is to be held by the trustees on trust for the survivor for their lifetime. Income produced by the trust would be paid to the survivor and there could be a discretionary power for the trustees to pay capital from the trust fund to the survivor if necessary.

If the survivor wished to move to a smaller property any surplus monies not required for the new purchase would be divided so that half would pass to the survivor absolutely and the other half would pass into the trust fund and would be invested to produce an income for the survivor. However, in this type of trust the survivor would not have a right to any of the capital held by the trust unless the trustees of the fund agreed to pay some of the capital to them. All of the income produced by the trust and any capital actually paid to the survivor would be included in any assessment of means by the local authority in respect of the funding of care fees but any capital not paid to the survivor would be protected within the trust and disregarded from the assessment.

Alternatively a mere right to occupy the jointly owned property could be given to the survivor. In this case, if the property is sold and no replacement property is purchased for the survivor to live in then one half of the sale proceeds would pass immediately to the beneficiaries of remainder of the trust and would not be available to the survivor at all. If the property were to be sold and a smaller property purchased, then any surplus monies not required for the new purchase would, similarly, be divided so that half of the surplus monies would pass to the survivor absolutely and the other half would pass immediately to the beneficiaries of the remainder of the trust and would not be available to the survivor.

You would need to decide whether you wish the survivor to have the right to income (and the possibility of capital) from the trust fund for their lifetime or whether you are content for half of any surplus proceeds of sale (or half of the whole of the proceeds of sale if no replacement property is purchased) to pass immediately to the ultimate beneficiaries of the remainder of the trust rather than to the survivor.