

- 1. Jac, Steve, and Sam are all friends from university. They decide to buy a house together. They have to decide whether they want to hold the land as joint tenants or tenants in common. Advise Jac, Steve, and Sam, giving your reasons.**

Jac, Steve and Sam should be advised that in law, they can only hold the land as joint tenants (s.1(6) LPA 1925). They can, however, decide how to hold the land in equity, either as joint tenants, or as tenants in common.

The main consideration for Jac, Steve and Sam should be whether they wish to be able to leave their share of the property by will. If they decide to hold the property as joint tenants, they will have chosen to own the whole of the property together, with none of them owning a share of it. This means that on the death of one of them, “survivorship” will be triggered. When this happens, the deceased joint tenant simply disappears from the ownership of the property and the remaining joint tenants continue to own the whole of the property together. If they hold the land as joint tenants, then none of them can leave their “share” of the property by will. This option is often chosen by couples, or families, where the parties would wish this to happen in any event.

If the friends choose to hold the land as tenants in common, then they will each own a quantifiable share of the property and they may do as they please with it. If they die, it will pass under their will or by the rules of intestacy to their next-of-kin.

For most people who are pooling their financial resources and buying a property as friends, the tenancy in common option is preferable for this reason.

- 2. They agree to be tenants in common. How would this be reflected on the land register? Why?**

The land register will reflect that they can hold the property only as joint tenants in law, and so will contain the names of all three of them as the registered proprietors of the property.

If they indicate on the Land Registry’s TR1 form that they intend to hold the land as tenants in common, then the Registrar must enter a restriction, known as the Form A restriction (LRA 2002, s. 44(1), and LRR 2003, r. 95(2)(a). This warns any would-be purchasers that the equitable ownership of the property may not necessarily correspond to the legal ownership, reflected in the land register. The potential purchaser can then ensure that he or she pays the purchase money to two trustees, thus overreaching any equitable interests in the land. See 8.7.2 for an example of how this works in practice.

- 3. They agree to be joint tenants. How would this be reflected on the land register? Why?**

The land register will reflect that they can only hold the property as joint tenants in law, and so will contain the names of all three of them as the registered proprietors of the property.

If the parties indicate on the TR1 that they intend to hold the property as joint tenants, then the land registrar does not need to enter a restriction on the register. The co-owners are able to deal with the land as they please and the potential purchaser is not threatened by the existence of undisclosed equitable interests, because the beneficiaries in equity are the joint tenants themselves. See 8.7.1 for more detail.

- 4. Mavis and Norris are the joint registered proprietors of Rose Cottage. They contributed equally to the purchase price. No restriction has been entered onto the register. One day, Mavis and Norris have a huge argument, and Mavis decides that she wants to leave her share of Rose Cottage to her sister, Rita. She writes a note, which she leaves for Norris on the mantelpiece, apologizing and stating her wish. Unfortunately, Norris has a heart attack and dies before he reads the note. When his will is read, Mavis is shocked to find that he has apparently left his share of Rose Cottage to Gail. Advise Mavis.**

Mavis and Norris are the joint registered proprietors of Rose Cottage, which means that both of their names appear in the Land Register. As no restriction has been entered in the land register, it would appear that they also hold the land in equity as joint tenants. This is also consistent with the starting point established in *Stack v Dowden* [2007] AC 17, which provided that the equitable ownership of the property would be presumed to follow the legal ownership of the property.

After their argument, it appears that Mavis has tried to sever the joint tenancy. She effectively serves a notice in writing to Norris, advising him of her intention (s.36(2) LPA 1925. This notice is entirely unilateral and does not require Norris's consent LPA 1925, s. 36(2) does not specify the form of the notice—only that it must be in writing; nor does it identify a mandatory means of service or delivery, so leaving it on the mantelpiece addressed to Norris may well suffice. LPA 1925, s. 196(3)–(4) indicates that, provided the notice has been served by the means given in these subsections, it does not matter if the notice has not actually received by the recipient.

Case law has established certain other requirements, however, which are necessary for severance to be effective. The intention to sever must be immediate, not planned for some future date—*Harris v. Goddard* [1982] 1 WLR 1203. The co-owner serving the notice of severance must intend it to take place from that moment on. This would again appear to be satisfied, provided that Mavis had made it clear that she did indeed intend to sever the joint tenancy.

There must also be evidence that the notice has been delivered. This does not necessarily mean that it must have been read or even received by Norris.

The facts in this situation are very similar to those in *Kinch v Bullard* [1998] 4 All ER 650. In that case, although the husband had not read the notice of severance before

his death, the court held that as the notice had actually been delivered, then severance had occurred.

If severance has actually occurred, then Norris's share of the property will pass to Gail under his will, since the joint tenancy was severed before his death.

Note, however, that if the court decided that the joint tenancy had not been severed by Mavis, then Norris's act in leaving the property by will to Gail would not, by itself, sever the joint tenancy. Severance can never be effected by will, as at the point of death, survivorship is triggered, which means that by the time that the will came to be administered, there would not be any share to be left.

See 8.6 for much more detail on severance.