



Creating a Life Interest or Right to Occupy



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Joint Tenancy

Most couples own their principal place of residence as **joint tenants**. This means that if one person dies, their notional half share of the property passes automatically to the surviving joint tenant **without reference to their Will**. All that is required to transfer the property into the name of the surviving partner or spouse is to file a Notice of Death and the Death Certificate. The same applies to joint bank accounts, jointly owned shares and most other jointly owned assets.

Tenants in Common in Equal Shares

If you own your home as tenants in common in equal shares, this allows you to deal with your half share of the property in accordance with your **Will**. This means that you can create a life interest in your half share of the property and leave this to your spouse or partner for their use during their life time and then it will pass to your children or whoever you wish to nominate as the designated beneficiary. Not only is this a good way of ensuring that the asset passes on to who you want it to go to, it also protects your surviving spouse or partner from predators and creditors who may come out of the woodwork after you have died.

How does the life interest or right to occupy work?

The terms of the life interest or right to occupy that you leave to your surviving spouse or partner can be as simple or as complicated as you wish them to be. Generally, it is wise to allow the property to be sold and the proceeds used to purchase another home, depending on the circumstances of your spouse or partner. For instance, they may wish to move into a smaller home or unit after you pass away or they may wish to move into a retirement village, depending on their age and health. You can provide in the life interest (which is contained in your **Will**) that your spouse or partner may deal with the property along these lines, provided they do not diminish the value of the half interest which you have left to them. It is a good idea to appoint your executors as co-trustees with your surviving spouse or partner to ensure that the terms of the life interest are honoured.

Steps to create the life interest

- Provide us with the instructions to sever the joint tenancy and incorporate this into your **Will**
- Provide us with details of the property and full names of the joint tenants
- Sign the necessary documentation so that the transfer severing the joint tenancy can be registered
- Sign your **Wills**

For more information, please contact Lesley Barnes on (07) 5506 8241 or by email lbarnes@attwoodmarshall.com.au.



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