Collas Crill explains... Vesting and severance

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This is part of a series of guides in which we examine areas of Guernsey law that frequently arise in practice. Further guides will be released; click here to subscribe to receive Collas Crill news and insights by email.

Forms of co-ownership

There are two types of co-ownership in Guernsey, joint ownership (**survivorship**) and ownership in common (**undivided shares**). The way in which the co-owners wish to vest the property between them will be stated in the conveyance.

Joint ownership

If a property is stated to be vested in purchasers for themselves, the survivor of them and the heirs of such survivor, the co-owners have an equal interest in the whole of the property, subject to a right of survivorship.

Upon the death of the first owner, the surviving owner (presuming that there are only two such owners) will become the owner of the property outright.

Joint ownership may be severed by re-vesting the property with the consent of all parties. Although one party's interest can be charged by way of a bond (mortgage), upon the death of that party the charge would fall away. For this reason, lending institutions will not provide finance against a survivorship interest in a property.

It is usual for married couples or committed partners to purchase a property on a survivorship basis. However, if one or more of the purchasers have children by a prior relationship, the other option of vesting property, ownership in common, may be more appropriate. This is to ensure that such children do not become disinherited.

Ownership in common

Co-owners may enjoy undivided shares in a property. The proportions of these undivided shares may vary according to the contributions being made by each purchaser. It is important to note that, just because individual purchasers may have paid unequal contributions to the initial purchase price, this does not automatically mean the vesting of the property would have to be in undivided shares, there may be other circumstances to consider. If a property is vested in unequal undivided shares, one would expect the individual purchasers to contribute towards any mortgage payments and also any major repairs to the property in those same proportions.

If it is simply the initial contributions which are uneven, it may be more sensible for the purchasers to execute a separate agreement to reflect this. The agreement can give the opportunity for the purchaser contributing the larger portion to recover this sum from the proceeds of sale of the property (with or without some adjustment taking account of the rise of the market or RPI) prior to the balance of the sale proceeds then being split equally between them.

Effect of co-ownership on proceeds of sale

In relation to property which is vested in joint ownership, the effect of this vesting on the proceeds of sale is documented in the case of *Waterman v McCormack* (Court of Appeal, April 2002).

A mother and daughter were in joint ownership of a property. The mother contributed the entire purchase price. The question was the entitlement of the daughter to any proceeds from the sale of the property which followed as a result of their relationship breaking down.

In the Court's conclusions, it acknowledged the two forms of ownership in Guernsey. The Court confirmed that both forms of co-ownership could be brought to an end by any co-owner in accordance with the maxim "*nul n'est tenu de rester dans l'indivision*" – no-one is bound to remain a co-owner.

The Court held that in a severance of joint ownership by sale or otherwise, the parties are entitled to the property, or to the proceeds of sale of the property, in equal shares.

The proviso to this was that there was no reason in principle why the parties to such a conveyance should not, if they so wished, have made different provision for the sharing of the property or the proceeds of sale in the event of severance by way of a separate agreement.

The Court left open the question whether a private arrangement outside the conveyance could validly have the same effect as including such provision in the conveyance itself. The commonly held view is that such a private arrangement with regard to the proceeds of sale constitutes a valid contract between the parties enforceable by law.

In relation to property which is vested in ownership in common, the effect of this vesting is much more straight forward. The proceeds of sale are divided between the co-owners in the same proportions as the undivided shares to which they are entitled in the property.

Severance of co-ownership

There are three ways available to sever co-ownership in a property:

- **Delaissance -** a simple conveyance where one or more of the co-heirs acquire the other co-owners interest in the property by conveyance concluded in the Contracts Court. This relies on the co-heirs being in agreement for one (or more) of the co-owners to acquire the property in its entirety;

- **Partage -** where (only if the property concerned is capable of sensible division into one or more separate parcels) each of the co-owners would have vested in them a separate parcel of the property, with each parcel being made up to an equal value by the payment of cash adjustments between the co-owners. This would also be completed before the Contracts

Court;

- **Licitation -** where there is no agreement able to be reached between co-owners to allow either a Delaissance of Partage to be completed. Licitation involves action through the Royal Court to have a judicial auction of the property ordered, where the property would be sold to the highest bidder. The auction will take place before a Jurat appointed a Commissioner. It can be agreed between the co-owners themselves, that only the co-owners may bid, but it is more likely that the auction would be public with the highest bidder taking the property in the usual way.

The sale proceeds of the property would be split between the co-heirs in equal shares in the case of joint ownership, or in the same proportion as their share in the property where it has been vested with ownership in common.

Advice

How you own your property depends on your personal circumstances and you should always consult a legal professional. If you require any advice on any aspect of property or planning please contact our Property Law team.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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