

# TIL DEATH DO US PART: DOES DIVORCE SEVER A JOINT TENANCY?

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## Case Study: Joan May Lightbourne v. Wenzel James Lightbourne [2015]

This guidance discusses the landmark Bahamian case of Joan May Lightbourne v. Wenzel James Lightbourne [2015] (Lightbourne v Lightbourne) which clarified the legal position relating to the severance of a joint tenancy and the right of survivorship when a divorce occurs.

### What is Joint Tenancy?

Joint Tenancy is the co-ownership of property where two or more individuals own property and there is an automatic **right of survivorship** in the event of the death of one of the owners. Where a joint tenancy exists, each owner is a joint tenant. If an owner dies, then their interest automatically vests in the surviving owner(s) and this automatic vesting process continues until there is one owner left.

A joint tenancy may be severed in one of three ways:

- by an act of one or both of the joint tenants;
- by mutual agreement; or
- through the course of dealing with the jointly owned property.

During their lifetime, a joint tenant may dispose of their interest in the property by severing their joint tenancy with the other owner(s) and turning their interest into a tenancy in common. However, a joint tenancy cannot be severed by a will or intestacy. Any purported disposition by a joint tenant of their interest in the property under their will would be invalid. Similarly, if a joint tenant dies intestate (without a will), their interest in the property cannot pass to their estate.

Where two individuals are married and purchase property as joint tenants, it is discussed in this guidance what would happen to the joint tenancy in the event of a divorce.

### Case Summary

In the case of Lightbourne v Lightbourne, the wife initiated the divorce proceedings. The matrimonial property consisted of property in The Bahamas and Jamaica – all of which were owned by the couple as joint tenants. The wife sought an order in the Supreme Court of The Bahamas for the Bahamian Property to be sold and for the net proceeds of sale to be divided equally between them. Unfortunately, the husband died before the court rendered its judgment. Due to the husband's death, the wife subsequently claimed that she owned the property as the surviving joint tenant by right of survivorship.

The husband's death created some legal uncertainty as to whether the joint tenancy had been severed before his death thereby terminating the wife's right of survivorship. If there was no severance of the joint tenancy at the time of his death, they would have owned the property as joint tenants and the wife would have owned the property by right of survivorship. However, if the joint tenancy was severed at the time of his death, there would no longer be a right of survivorship and they would each own a half interest in the property as tenants in common.

### **Implications of the Wife's Summons**

In light of the husband's death, the crucial issue for determination by the Court was whether the wife's actions in filing the summons for the Bahamian Property to be sold and for the proceeds of sale to be divided equally between them amounted to an effective severance of the joint tenancy, thereby terminating the right of survivorship.

It was held by the Supreme Court and re-affirmed in the Court of Appeal that the wife's actions in seeking to obtain an order from the Court to sell the Bahamian Property and to divide the proceeds of sale amounted to a clear intention to sever the joint tenancy, thereby terminating the right of survivorship and leaving her with only a half interest in the property as a tenant in common. Accordingly, the husband's estate would be entitled to receive one-half of the proceeds of sale in the event that the property was sold.

It should be noted that the end result that the wife's summons had on effectively severing the joint tenancy does not necessarily mean that every summons in other divorce proceedings would have the same effect where a property adjustment order is sought. Each case will depend on its own facts and the court will take into consideration several factors - the specific terms, contents and objective of the summons along with the supporting affidavit filed by the party in question.

### **Does divorce sever a joint tenancy?**

Filing for divorce does not automatically sever a joint tenancy. The Court of Appeal in *Lightbourne v. Lightbourne* stressed the importance that it is not enough for a mere intention to sever a joint tenancy to exist. The intention to sever a joint tenancy must be clearly demonstrated by the deliberate actions and conduct of the party wishing to sever. The parties would either have to formally agree to sever the joint tenancy by mutual agreement, or one or both parties would have to demonstrate a clear intention to do so by their actions and conduct.

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