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# UNILATERAL SEVERANCE OF JOINT TENANCY OWNERSHIP OF PROPERTY OR LAND



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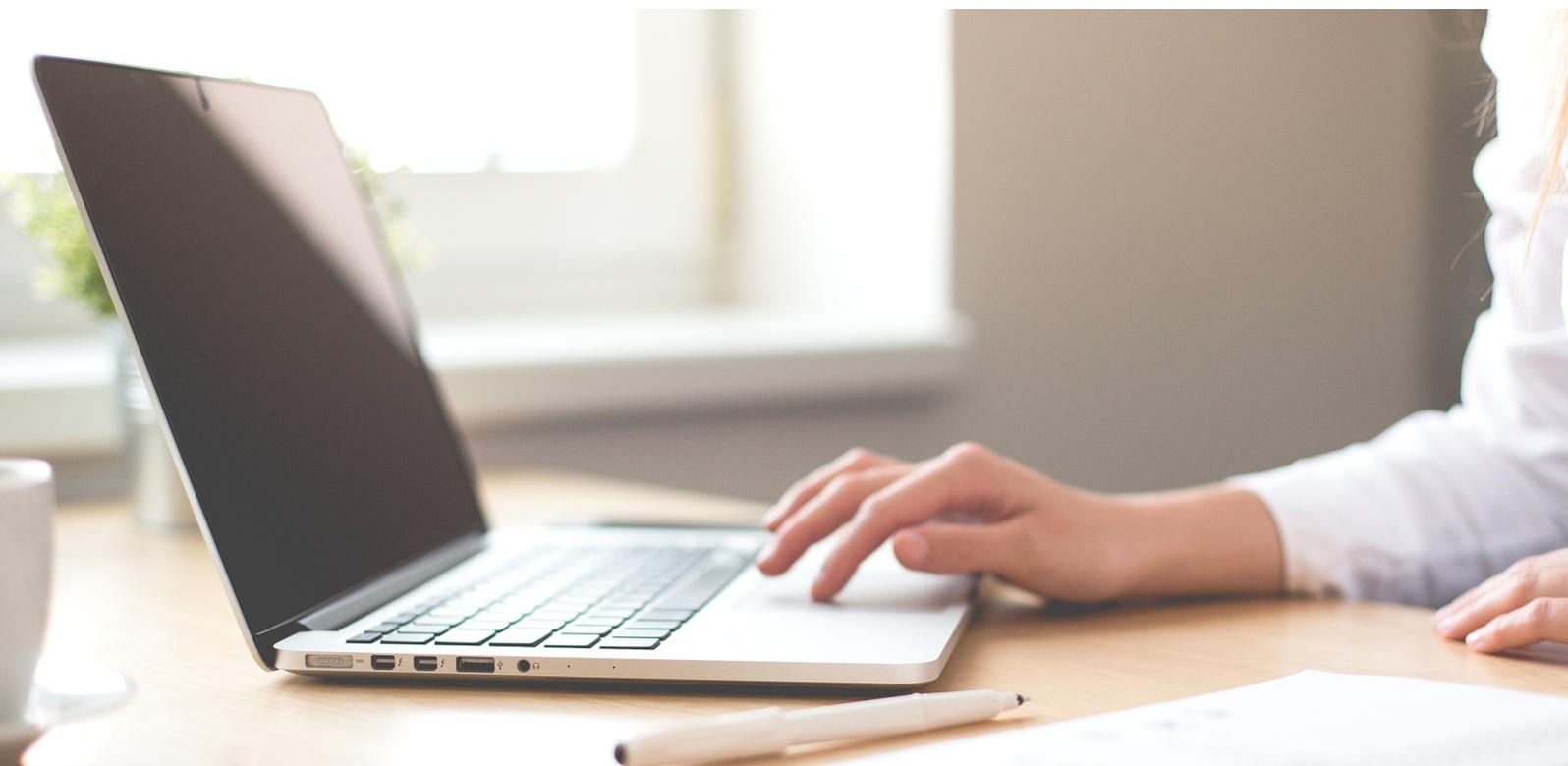
## UNILATERAL SEVERANCE OF JOINT TENANCY OWNERSHIP OF PROPERTY OR LAND

It is common understanding that a property (or land) can be co-owned in a personal financial planning situation. And the two basic co-ownership arrangements are joint-tenancy and tenancy in common. The purpose of this essay is to highlight a unique law not commonly known by financial practitioners, which is unilateral severance of joint tenancy. As we are financial practitioners, I will link the learning points back to estate and financial planning.

### What is this law all about?

Let me illustrate using a case study. In January 1995, shortly before Mr. Lucky Tan passed away, he executed a will to give half a share of his house to a charitable organisation (reference: “Madam Lee: ‘I paid for this house with my sweat’”, Straits Times, 29 April 1996). The intriguing point was that the house was held in joint tenancy with his wife, Mdm. Lee. Based on normal estate planning interpretation, that gift should fail because Mdm. Lee was the surviving joint tenant of the house. However, the fact of the case was that Mr. Tan also executed a deed of severance of the joint tenancy. This case was challenged legally by Mdm. Lee as well as the beneficiary of the gift. In the end, it was ruled in favour of the beneficiary, which was the charitable organisation.

Let us analyse this fact logically. While it is logical that one should be given the right to sever a joint tenancy, but must the consent be sought from the other joint tenant? The answer is there is no need to have the consent of the other joint tenant, and the ability to unilaterally sever a joint tenancy is the main topic of this essay.





### The source of law

The source of this law can be found in the statutes under Land Titles Act (Chapter 157) and Conveyancing and Law of Property Act (Chapter 61). They are listed as follows:

Based on the above, it is therefore an established fact that, in Singapore, a joint tenancy can be unilaterally severed by one party without the consent of the other joint tenant. But there is also a specific outcome if one were to rely on this law to sever a joint tenancy, which is, the share of the property will then become equal amongst all the tenancy in common owners. For example, in Mr. Lucky Tan's case, the effect of the deed of severance will convert the joint tenancy of the house into tenancy in common of equal share with his wife, Madam Lee. This outcome will be seemingly unfair in a situation when one party contribute financially more towards the property, which indeed was the case in Mr. Lucky Tan and Madam Lee's situation. And this provision is spelled out in Section 53(6) of Land Titles Act and Section 66A(4) of Conveyance and Law of Property Act.

1. **Section 53(5) of Land Titles Act (Chapter 157)** – Without prejudice to any rule or principle of law relating to severance of a joint tenancy, any joint tenant may sever a joint tenancy of an estate or interest in registered land by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants.
2. **Section 66A(3) of Conveyancing and Law of Property Act (Chapter 61)** – Without prejudice to any rule or principle of law relating to severance of a joint tenancy, a joint tenant may sever a joint tenancy of an estate or interest in land by a deed of declaration and by serving a copy of the deed of declaration personally or by registered post on the other joint tenants.

### The intent of the law

Usually on the first read, most financial practitioners will feel that this law goes against common logic, hence it is necessary to understand the intent of this law. In 1993, Professor S. Jayakumar, in his capacity as Minister for Law then, explained the intent of this law during the second reading of this law in parliament (Singapore Parliamentary Debates, Official Report (18 Jan 93) vol 60, at clos 374 – 377), I reproduce the main points of that speech as follows:

Next, unilateral severance of a joint tenancy. The Bill allows a person owning land jointly with another person to unilaterally sever a joint tenancy...[A] joint tenancy, by its very nature, also has some serious disadvantages in cases where one co-owner, for good reasons, does not wish the survivor to take the whole of the property...Existing law permits severance of a joint tenancy only in very limited circumstances, for example by mutual agreement or conduct of the parties...But a co-owner may wish to sever the joint tenancy in a simpler way, without having to transfer away his or her share of the property and without having to obtain the consent of the other party, which sometimes may not be feasible, especially in certain domestic situations...Therefore, the proposed amendment will enable a son/daughter or wife to secure his or her interest in the property for him or her immediate family in a situation where he or she may need to do so.

From Prof Jayakumar's explanation, one can see the intent behind this law. Indeed, there are some situations where this law will make sense, which I will be sharing in the next few paragraphs.



## Effects of this law on financial and estate planning situations

Estate Planning in Divorce Situation – When a couple decided to end their marriage, splitting of assets is usually a source of anguish especially when it involved a jointly owned property. It will not be feasible to expect the ex-spouse to consent amicably to the severance of the ownership of the property. Hence, in a situation like this, it is requisite and imperative to have such law to enable one party to unilaterally sever the joint-tenancy and will it away if one dies during the separation period (i.e. awaiting for the final divorce order from the court)

Loss of Mental Capacity Situation – If one of the joint owners happens to lose mental capacity, it might create property holding issues of property. Hence, the other party could unilaterally sever the joint tenancy to secure his or her own rights just in case he or she passes away while the surviving joint owner is still in the state of a loss of mental capacity.

Planned Giving – There could also be an estate planning situation where a person wishes to give away his share of the property to another party of his choice (other than the other joint tenant), hence this law works very well in this situation.

One point to take note about this law. Though the consent of the other joint tenant is not required to sever the joint tenancy, he or she will be notified of the intent via an official letter from the government agency overseeing land ownership.

As professional financial practitioners, we have to see the fact as it is, however illogical this might appear to be. Unilateral severance of joint tenancy is one such fact.

### ABOUT THE AUTHOR

Allen Lim is an active IFPAS member, serving in the IFPAS' E & T Department as an EXCO member. Professionally, Allen is a practising Licensed Financial Practitioner in Singapore. He holds the AFC, ChFC, CLU & FChFP designations, and has a Certificate in Law (Estate Planning).

