

**Severance of the Joint Tenancy**  
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There are many occasions both in matrimonial finance and TLATA cases where practitioners consider severing a joint tenancy yet most of us are unaware that there are specific rules about service of the notice, which if not served properly can have serious implications for those involved.

It is always difficult to know in which cases one should sever and those where it is not advisable and generally, practitioners will know when to do so and when not to – it really is something to consider on a case by case basis. Severance can be achieved in a number of ways, some of which are left over from the common law prior to the coming into force of the Law of Property Act 1925, others brought in by the LPA 1925 section 36. I do not propose to deal with all the methods but to concentrate in this article on the most frequent method of severance, the notice in writing directed to the other joint tenant or tenants. Indeed section 36(2) LPA provides-

‘...where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do..’

As is clear from the section, the notice is served unilaterally by one joint tenant upon the others. While it may be helpful for the recipients to acknowledge or sign the notice to indicate that they have received it and understand its effect, that is not in fact necessary for the notice to be valid in achieving the severance, as we shall see. Having served the notice, the next step is to register the usual tenancy in common restriction at the Land Registry such that anyone receiving office copies of the entries on the register will see the restriction. The effect of severance apart from creating a tenancy in common (in equal shares if nothing more is said in the notice) is that the right of survivorship, the trademark as it were of the beneficial joint tenancy, is removed. This may have grave consequences for a party to proceedings.

As already mentioned, it is not a question of whether the recipient of the notice was aware of it that gives the notice its force and validity but whether or not the notice was properly served. This point is most clearly illustrated by a tragic case, decided by Neuberger J as he then was.

***Kinch-v- Bullard, [1999] 1 WLR 423*** concerned a terminally ill wife, Mrs Johnson, who was considering divorce proceedings. She was joint beneficial owner with her husband Bryan of 16 York Road, Ipswich. Mrs Johnson consulted solicitors and one of the matters she discussed with them was whether to sever the beneficial joint tenancy. In the event that Mrs Johnson (as appeared likely at this time) predeceased her husband, the entire legal and beneficial ownership in the property would vest in him under the right of survivorship. The effect of a severance would be that on the death of Mrs Johnson, Mr Johnson would have the whole of the legal title vested in him but the beneficial interest would be held by him on trust and in equal shares for himself and Mrs Johnson’s estate.

It was about a year later that Mrs Johnson’s solicitors served a divorce petition and at that time that she finally decided also to sever the joint tenancy of the former matrimonial home. The notice of severance was prepared by Mrs Johnson’s solicitors on the 3<sup>rd</sup> August 1995 and she duly signed it. It was then sent by ordinary first class post under cover of a letter of the 4<sup>th</sup> August 1995 to the parties’ matrimonial home.

Over the weekend of the 5/6<sup>th</sup> August 1995 Mr Johnson suffered a serious heart attack and was admitted to hospital on the 7<sup>th</sup> August. Sometime either on the 5<sup>th</sup> or 7<sup>th</sup> August 1995<sup>1</sup> the postman put the notice of severance through the letter box at the property. Mrs Johnson, knowing full well what it was, picked it up and destroyed it, presumably because she now believed that the husband would predecease her and that it was Mrs Johnson who would benefit from retaining the right of survivorship in respect of the property. In the event, Mr Johnson died in hospital on the 15<sup>th</sup> August 1995 and Mrs Johnson subsequently died on the 6<sup>th</sup> January 1996.

The parties in the case were the respective executors of the Johnson's estates, the plaintiffs being those acting on behalf of Mr Johnson and inter alia, seeking a declaration that they were entitled to one half beneficial share of the property or its proceeds of sale. The Defendants on behalf of the estate of Mrs Johnson had argued that the notice was not validly served or given and that as a consequence the beneficial joint tenancy was not severed.

Firstly however it had to be demonstrated that the posting to and subsequent delivery of the notice at the property 'was effective to sever the joint tenancy' even though the wife intercepted and destroyed her own notice served on her husband on her behalf after it had been delivered, because his death appeared imminent. This was to be a preliminary issue in the case before Neuberger J and he had to decide whether, in the light of the provisions of section 36(2) of the LPA 1925 Mrs Johnson 'gave' notice to Mr Johnson. Neuberger J said that as a matter of ordinary language the notice was not 'given' to Mr Johnson because he never received it but in order to justify the contention that notice was given, reliance was placed upon section 196 (3) LPA 1925 which is set out below-

(3)Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

Notwithstanding the wife's interception of the notice, or the fact that the husband never had any knowledge or awareness of the notice, Neuberger J held it had been validly served and was effective because it complied with section 196(3) LPA 1925. Firstly, it was sent to Mr Johnson at his 'last-known place of abode' which until his death was his actual abode. Secondly, the notice was left there having been posted through the letter box and remained on the mat, even though it was not there for long thanks to Mrs Johnson. In such circumstances however the notice was duly served. Neuberger J's reasoning was that the-

'natural meaning of Section 196(3) is that if a notice can be shown to have been left at the last known abode or place of business of the addressee, then that constitutes good service, even if the addressee does not actually receive it.....a notice served in accordance with Section 196(3) was validly served even if it could be shown never to have come to the attention of the addressee....once the sender has served the requisite notice the deed is done and cannot be undone..'

Neuberger J recognised that compliance with section 196(3) might lead to an unfair result in an exceptional case (although he gave no example of what that might be) but the law is at least simple and clear and that if the law were to start implying exceptions into the clear and simple statutory procedure, confusion and uncertainty could result. He posed several 'what if' questions if he decided the case differently and that there would be difficulties of considering whether Mrs Johnson

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<sup>1</sup> The parties agreed for the purposes of the proceedings that the notice was not served until the 7<sup>th</sup> August 1995.

would have to pick up the notice just posted through the letter box within a maximum time limit to prevent its being validly served. What if Mr Johnson had seen the envelope containing the notice on the mat? What if Mrs Johnson had picked the notice off the mat but kept it and not destroyed it? What if she picked it up intending to destroy it but changed her mind? What if she had picked it up, tried to destroy it but Mr Johnson had seen her doing it or had seen and read the notice? Lord Neuberger's insistence on sticking with the letter of the law at least provides the necessary certainty in such matters.

Knowing that, it behoves practitioners firstly to consider with the Client the likely advantages and disadvantages of severance and particularly whether it is better for a client to retain the right of survivorship or to forfeit it in the act of severance.

Where there are more than two joint tenants if severance is to take place, the severing joint tenant needs to serve notices of severance on all the other joint tenants or could be in a situation where he severs his own interest from one of say, three joint tenants but leaves the other two as beneficial joint tenants with him as a tenant in common with them because he has failed to serve one of them properly or at all.

In those cases where the advice is that severance should take place, practitioners must ensure that the client who is going to serve the notice does so properly. The easiest method is of course for the solicitor to write to the person to be served as there are provisions for when service is considered effective having sent a letter by first class post. Recorded delivery would ensure that the recipient has to sign for the letter. It will be important to demonstrate that the notice was served in the sense of whether it was sent to the intended recipient's last known place of abode or his business. Unfortunately, there are cases such as *Kinch –v- Bullard* itself, where due to the imminent death of a party, that party wishes to put their affairs in order prior to their demise which may involve altering property interests which they were content to keep during their lifetime. It may be the case that it is the healthy party who wishes to alter those interests in light of the impending death and, following the reasoning in *Kinch –v- Bullard* it is not appropriate or necessary or indeed valid to serve a notice of severance by leaving it at the hospital bedside so the notice will be seen by the recipient.

Most interestingly, the service provisions of the unilateral notice of severance are such that the notice does not need to be noticed by the recipient! The giver needs to be able to demonstrate that they complied properly with the provisions of section 196(3) LPA!