



WHAT YOU NEED TO KNOW ABOUT PROPERTY INHERITANCE, JOINT PROPERTY OWNERSHIP, AND BUYING AND SELLING PROPERTY IN A TRUST

Property is one of the most commonly owned investments for most South Africans – whether it be your primary residence or perhaps you own additional properties, either a holiday home or a house or apartment that yields a rental income.

Perhaps you were lucky enough to inherit property that you now own jointly, in or outside of a trust, with other family members. Or you may be considering buying an additional property jointly with a partner or friend.

David Knott of Private Client Trust, a division of Private Client Holdings, provides some advice on joint property ownership, property inheritance and property held in a trust.

Buying a property that is held in a trust

“At one stage it was thought that instead of buying a property held in a trust outright and being obliged to pay transfer duty, it was advantageous to purchase the entire trust and thus avoid transfer duty. This kind of transaction goes against trust law,” says Knott, “but various transactions did go through on this basis due to a lack of understanding of trust law by various Deeds Office officials and unscrupulous attorneys. The law was subsequently changed and if a property is purchased from a trust or if a trust is sold, there is the normal rate of transfer duty payable.”

Selling a jointly owner property and selling property held in a trust

Knott advises that there is no difference to the sale process of a jointly owned property other than the fact that all co-owners need to agree to the sale and the sale price and all owners need to sign the deed of sale or grant a power of attorney to enable the deed to be signed on their behalf.

“If a property is held by a trust, the trust deed would dictate how the property should be sold, a proper trustee meeting would need to agree to the sale and once again all trustees would either need to sign the deed of sale or authorise how the deed is signed.”

Co-Inheriting property - how it is held and registered and what happens when you sell?

According to Knott, co-inheriting a property would be similar to purchasing a property with others. "All co-inheritors and co-purchasers would be named on the title deed and they would all have a say as to how the property is to be managed, what improvements need to happen and would be jointly responsible for municipal charges, insurance, maintenance etc."

"When it comes time to sell the property, all joint owners would have to agree to the sale price and be joined in the sale. Obviously, co-ownership comes with its disadvantages when the co-owners have differing views and financial backgrounds and this is a source of potential conflict. In extremis, the Court would have to intervene and nobody should wish to have the Courts decide for them. If the co-owners see reason and get along, no problem," concludes Knott.

For more information contact David Knott on (021) 671 1220.

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