

(This Q & A appeared in the Sunday Times Personal Investment Column on August 28, 2005)

HEADLINE: A divorce does not change your home's title deed

Q I HAVE been a divorcee since 1999. A judge awarded 40 per cent of the matrimonial property, a condominium unit, to my former husband and the other 60 per cent to me. That property was bought jointly. Before our divorce, my former husband had not contributed to the monthly installments for the property or to its maintenance.

Since the judge divided the property into our respective shares, is the title deed changed automatically to tenancy-in-common?

I have been occupying the property since 2001 because I would suffer a great loss if I were to sell it.

A IN DIVIDING the matrimonial home, the court takes into account a number of factors, including all financial contributions made towards the purchase and maintenance of the home.

There are two ways of holding a property - either as joint tenants or tenancy-in-common. Under the former, both parties are entitled to the whole of the property, so that in the event of the death of one party, the property automatically devolves to the other. This is known as the right of survivorship.

Under tenancy-in-common, each party holds a specific share of the property, and would be entitled to sell or will away his share without the consent of the other holders.

It is unusual that the court directed only that you be entitled to 60 per cent of the property and your former husband 40 per cent without specifying the actions that are to follow.

Usually, the court would either direct that the property be sold on the open market and the net proceeds be divided in specific proportions, or that one party transfer his share to the other party with certain conditions attached, such as paying back the Central Provident Fund monies.

The order of court in your case has the effect of severing the joint tenancy. Severance is the method by which a joint tenancy is converted into a tenancy-in-common. It does not automatically convert the title deed to tenancy-in-common.

In order to change the title deed, you would most likely have to lodge a transfer with the Land Titles Registry, stating the new manner of holding and the shareholdings of the respective parties.

The registry will issue a new title to reflect the ownership of the property as tenancy-in-common in specified shares. Stamp duty may be payable. Once the title deed has

been converted into tenancy-in-common, you can decide to whom you wish to give your share of the property when you make a will.

For practical purposes, it would be advisable to sell the property on the open market and share the proceeds according to the proportions directed by the court, or for one party to buy the other's share.

Naina Parwani Partner Parwani & Co