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If you fail to prepare, you prepare to fail…

On 27 April 2018, the appeal judgment in **Wall v Munday [2018] EWHC 879 (Ch)** was handed down. The case concerned the determination of two parties' interests in their former matrimonial home after one of the parties passed away. It is an interesting case that reminds us that a failure to deal with an issue in someone's lifetime can lead to a protracted, uncertain and expensive Court claim on death.

Bryan Wall and Christine Munday were married for 5 years from 1969 to 1974. During their marriage, they purchased a property as a beneficial joint tenancy. Mrs Munday left the house in 1973 and never returned. From 1973 until his death in 2015, Mr Wall treated the house as his own and paid all of the outgoings on it. Solicitors were involved in the divorce settlement but the settlement did not include reference to the house. On Mr Wall's death, the house passed to Mrs Munday due to the principle of survivorship. Mr Wall's estate brought a claim for a share in the house. At first instance, the Judge held that the joint tenancy had been severed by the end of 1975 and that, from then on, Mr Wall and Mrs Munday owned the house as a tenancy in common in equal shares. The Judge accepted that there had been no agreement between the parties that the house was going to be held as anything other than a beneficial joint tenancy. However, he found that the tenancy had been severed by reason of the mutual dealings between the parties so the fact that Mrs Munday permanently left in 1973 and did not bear any of the liabilities on it after then, Mr Wall treated the house as his own, paid everything on it, managed it and let it out from 1973 until his death.

Mr Wall's estate appealed on the basis that the estate should own 86% of the equity and Mrs Munday should own 14%. On appeal, the appeal Judge felt unable to interfere with the Judge's decision at first instance so affirmed the 50/50 decision.

The appeal did however succeed on the question of costs. At first instance, the Judge ordered Mr Wall's estate to pay 80% of Mrs Munday's costs. This was appealed by the estate on the basis that it had, in fact, won on its claim and so should recover costs from Mrs Munday in the usual way. The appeal judge agreed. Whilst the appeal Judge acknowledged that the estate had not won on its primary claim which was that Mr Wall owned the house outright, it had won on its fall back position which was that the principle of survivorship did not apply and the estate owned 50%. The appeal Judge therefore allowed the appeal on costs and ordered for Mrs Munday to pay 60% of the estate's costs of the hearing.

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This case serves as a cautionary tale for what can happen when someone's affairs are not in order when they die. Mr Wall was solely responsible for the house from 1973 until 2015 and treated it as his own. Mrs Munday did not contribute to it at all after 1973. However, 42 years later, she was held to have retained a 50% interest in the house. If the dispute as to the ownership of the house had been resolved during the divorce process whilst Mr Wall was alive, the situation on death may have been very different. Mr Wall may have been able to remove Mrs Munday's name from the title perhaps by Mrs Munday receiving a greater share of other marital assets. As the sole owner, any money then spent on the house by Mr Wall would have been solely for his benefit. Further, Mr Wall's estate would not have had to incur the significant expense of bringing a claim after his death.

Our Contentious Trusts and Probate Team at Meridian Private Client are experienced at dealing with all manner of property disputes that may not come to light until after someone passes away. Our contact details are set out below:

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