

Fact Sheet

Tenancy

When purchasing a property with other people, the type of tenancy you choose has important consequences both during the ownership of the property and upon the death of either party.

What is joint tenancy?

Joint tenancy means that you own a property wholly and equally with another person (or persons). Neither party owns a specific 'share' in the asset, so one tenant may not sell or mortgage their interest in the property.

Joint tenancy is treated under the law of survivorship, so when one tenant dies, ownership automatically passes to the surviving owner(s). The tenant's interest in the property cannot be gifted to anyone else in their will. Only the last surviving owner of the property will own the property absolutely, and this person can then gift the property in their will to a third party.

Many couples choose to hold property as joint tenants. However, if it doesn't suit your needs, you can buy the property as tenants in common.

Tenants in common

If a property is owned as tenants in common, the tenants each own their individual share absolutely. This means tenants can sell or mortgage their interest in the property separately. Tenants in common can also dispose of their share of the property as they wish in their will; the other tenant(s) will not automatically receive the property upon the death of a tenant. This can be the right option in the case of second marriages, especially when there are children from the first marriage.

This also tends to be a more suitable option for business partners or friends who are buying a property together. Share in the property can be held equally or in uneven proportions.

A joint tenancy can become a tenancy in common if the parties agree. This often occurs when a marriage or defacto relationship ends, when both parties no longer wish the other party to become the owner of the whole property after their death.

When purchasing a property with other people, you should discuss and agree which type of tenancy will suit your situation. Legal advice is strongly recommended before purchase to avoid problems later on.

References:

<https://www.andersons.com.au/lawtalk/2014/september/joint-tenancy-v-tenants-in-common/>

<http://www.millsoakley.com.au/docs/Joint%20TenancyTenancy%20in%20Common.pdf>

http://www.lpi.nsw.gov.au/about_lpi/land_title_questions/whats_tenancy_mean

<http://www.yourinvestmentpropertymag.com.au/news/tenancy-in-common-and-what-it-could-mean-for-you-201085.aspx>

<http://www.investors.asn.au/education/investment-basics/investment-structures/>



Benefits of joint tenancy

- Upon the death of one party, the property automatically passes to the survivor. This saves time and money by avoiding the need to obtain a Grant of Probate.

Disadvantages of joint tenancy

- Tenants cannot act separately from one another, so you cannot leave your 'share' of the property to whomever you like in your will

Benefits of tenancy in common

- Tenants can deal with their share of the property separately from the other parties; you can sell or mortgage your share of the property, and assign your portion of the property to whomever you like in your will.
- You can buy a property with a friend, contribute different amounts, and own a proportionate share of the property
- There can be some tax benefits particularly around capital gains tax.

Disadvantages of a tenancy in common

- There may be some negative effects on your ability to finance other properties later on
- If you want to change your ownership percentage, you will need to pay stamp duty charges.

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