

Co-ownership of Real Estate

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Two Types of Co-Ownership

The two major forms of co-ownership of real estate are joint tenancy and tenancy-in-common. Both forms of co-ownership allow for simultaneous rights to possession of the whole of the property. However, there is an important distinction and consequence of each, particularly upon the death of a co-owner.

What is a Joint Tenancy?

A joint tenant does not hold a specific share in the jointly owned property. Rather, each joint tenant shares a right to the whole of the property that is indistinguishable from his/her other joint tenant(s) (ie. an interest of a joint tenant is not differentiated into a distinct allocated share).

The significance of the above ownership of property is that upon the death of any one or more of the joint tenants, the remaining joint tenant(s) will automatically be entitled to an undivided share of the whole of the property by virtue of the right of survivorship. In that situation, the property will pass from the deceased joint tenant to the other joint tenant(s) and not into the Estate of the deceased joint tenant. This is because the interest of a deceased joint tenant is extinguished at the moment of death, and any attempted disposition of the deceased joint tenant's interest through his/her Will is ineffective. In addition, the heirs of a deceased joint tenant will have no claim to the interest formerly held in joint tenancy by the deceased.

The most common form of joint tenancy is between husband and wife. However, even if you are married, you should check the Certificate of Title to any property you own, as your property may be held as tenants in common.

What is a Tenancy in Common?

Although both tenants in common and joint tenants share undivided possession of the whole of the property, unlike joint tenants, tenants in common have a separate and distinct share.

No right of survivorship exists between tenants in common, as each tenant in common holds a separate and distinct share from the other tenant(s)-in-common. Accordingly, their separate interests will pass through their Wills to their respective Estates upon their deaths.



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An example of when the appropriate type of co-ownership would be tenants in common is where business partners purchase property for the purpose of their joint business/investment activities.

Changing Co-Ownership

It is a relatively simple exercise to change a tenancy-in-common to a joint tenancy or a joint tenancy to a tenancy-in-common, provided that there is no percentage change in the ownership. In both cases, a Transfer of Land signed by all interested parties will need to be prepared, stating that you now wish for the property to be held as joint tenants or alternatively as tenants-in-common.

A registration fee will be payable upon lodgment of the Transfer at Landgate and there is only nominal stamp duty payable on a property transfer of this type.

In the event a joint tenancy is to be changed to a tenancy in common, or vice versa, in unequal shares eg. from a joint tenancy to a tenancy in common as to 60/40, or vice versa, then duty is chargeable on the percentage by which the ownership has changed, eg. in the example, 10%.

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