

BUYING WITH SOMEONE ELSE?

Joint tenants or tenants-in-common? What does that mean?

If you are buying real estate with someone else, you will need to decide how your rights in the property are shared. We will ask for your instructions about this when acting for you to buy the property.

There are two ways ownership of real estate can be shared:

1. as joint tenants
2. as tenants-in-common.

What does “joint tenants” mean?

Joint tenancy means that each of the owners' rights in the property are equal and that if one owner dies, they simply cease to be an owner and the surviving joint tenant or joint tenants continue to own the property. Ownership is not apportioned in separate shares.

Consequences of being a joint tenant?

Consequences of being a joint tenant include:

- your interest in the property is not able to be given away or dealt with in your Will, unless all other joint tenants have died before you, leaving you to be the sole owner
- you are jointly and severally (meaning on your own), responsible for any mortgages against the property
- you cannot deal with your interest in the property separate from the other joint tenants, so all joint tenants need to consent to any land dealing.

This type of arrangement may, for instance, suit a husband and wife, who want to ensure that the last surviving of them has certainty about owning their home and that the home is not able to be affected by any issues or disputes, which may arise in relation to the estate, of the first of them to die.

It is possible to convert an existing joint tenancy into a tenancy in common. There are costs, fees and transfer duties involved to do this. The consent of any mortgagee is usually required. We can assist if you require advice about this type of matter.

What does “tenants in common” mean?

Tenants in common own discrete proportions of the property, which may be unequal. For example:

- two people may share ownership of a property as tenants in common, with one having a 70% share and the other having a 30% share
- four people may share ownership of a property as tenants in common, in equal shares; so each would have a 25% interest.

Each owner’s share forms part of their personal estate and can be dealt with separately from the remaining interests in the property.

Consequences of being a tenant in common?

Consequences of being a tenant in common include:

- if you die, your interest in the property will be gifted or dealt with in accordance with your Will or in the absence of an effective Will, in accordance with succession laws
- if you die, your share in the property may pass to someone who does not already have an interest in the property, making them a new owner in conjunction with the other remaining tenants in common
- you are able to define your interest in the property, having regard, for instance, to the capital contribution that you have made to buying the property
- you are able to deal with your share in the property separately from the other tenants in common, so you may be able to sell your share without affecting the interest that the other tenants in common hold; however, note that the person you transfer your share to will then own the property as tenants in common with the other remaining owners
- another tenant in common who owns the property with you may transfer or deal with their share separately from you and you could then own the property with someone other than the person you original acquired the property with.

It is possible to convert an existing tenancy in common into a joint tenancy. There are costs, fees and transfer duties involved to do this. The consent of any mortgagee is usually required. We can assist if you require advice about this type of matter.

Are there other options where there are three or more owners?

Where there are three or more owners, it is possible for a property to be held as tenants in common, with a proportion of the property being held by two or more owners as joint tenants. An example could be where a person purchases a property in conjunction with their parents, but the parents want to ensure that while ever at

least one of them is surviving their share is held by them. In this scenario, the property may be bought as tenants in common as follows:

- with a 50% interest held by the child
- a 50% interest held by the parents as joint tenants.

These types of arrangements can also be used for estate and business succession planning where real estate is purchased by multiple parties for investments purposes. An example may be where a property is to be partly owned by a company (or other entity) and partly by related individuals.

Tax and duties consequences

Depending on the circumstances, how rights in a property are held by multiple owners can affect the stamp duty payable when purchasing real estate or the capital gains consequences when an owner dies or disposes of their interest.

Already own real estate and not sure how it is held?

Where there are multiple owners, the Land Title Register records whether the property is held as joint tenants, tenants in common (and if so, each owner's share) or in a combination arrangement. This information is also recorded on the Certificate of Title for a property, if one has been issued.

If you cannot recall what your rights in a property are, this can be determined at any time by doing a search of the Land Title Register.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you are:

- buying or selling real estate
- administering an estate that has real estate interests to be dealt with
- concerned with succession planning for your personal estate or business

Swanwick Murray Roche can provide timely tailored advice about property rights and your circumstances. Our Partners, Scott Beaumont and Terry Tummon, have extensive experience in this area of law.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au