

Should I purchase property as joint tenants or tenants in common

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When purchasing property in NSW with two or more persons, it is essential to consider how you will own the property together and in what proportions. The two options when purchasing property with others are to purchase as either joint tenants or tenants in common.

Joint tenants vs tenants in common

Joint tenants

If the owners of the property are joint tenants, then they jointly own the property.

If any of the joint owners dies, then the ownership of the property would pass to the survivor(s) automatically. The deceased's interest in the property would not be dealt with under the terms of their Will.

Tenants in common

If the owners of the property are tenants in common, then they would each own a share in the property.

The share that is owned by each of the owners can be equal (ie 50/50) or unequal in whatever proportions are selected.

If any of the owners dies, then their share of the property would be dealt with under their Will (it would not pass automatically to the other owners of the property).

Why choose joint tenants?

Purchasing as joint tenants is the most common option for married couples or couples in a long term de-facto relationship.

The process of transferring the property to the surviving joint tenant is much less costly and much faster than the process of transferring the interest in the property under a Will. If one of the joint tenants dies, then a Notice of Death would need to be registered with the Land Registry Services to move the property into the name of the survivor. A Grant of Probate would not be required to transfer the property to the survivor.

Why choose tenants in common?

Purchasing as tenants in common is often more appropriate under, for example, the following circumstances.

1. One or more of the owners does not want the whole of the property passing to the other owners in the event of their passing. This can include where the owners are friends, a new couple, siblings, parents and children, extended family members, etc.
2. One of more of the owners want to gift their interest in the property in a particular way if they die. This could include where the owners are a blended family (ie the couple have children from previous relationships).
3. One or more of the owners wish to record ownership of the property in different proportions. For example, if one owner contributes more of the purchase price than the other owner(s), the parties may wish to record this in the ownership proportions noted on title.

When do I need to decide?

It is best to decide before exchanging contracts for the purchase as this is recorded in the Contract for Sale. There can also be some stamp duty implications if the proportions that will be noted on title are changed between exchange of contracts and settlement.

Can I change the way the property is owned, after purchasing?

It is possible to change between tenants in common in equal shares (ie 50/50) and joint tenants after purchasing, by registering on title either:

1. a Transfer Severing Joint Tenancy, to change from joint tenants to tenants in common in equal shares; or
2. a Transfer Altering Tenancy, to change from either joint tenants to tenants in common in equal shares, or tenants in common in equal shares to joint tenants. If you have a mortgage on title, then the mortgagee would need to confirm their consent for a Transfer Altering Tenancy to be registered.

Transfers that change the ownership proportions will incur stamp duty, calculated on the market value of the proportion being transferred.

Get help from a property lawyer

Whenever purchasing a property with other persons, taking the time to work out how you will be purchasing together, and the impact that it has on your Will and estate plan, can save you time and cost later on.

Our property and conveyancing team can advise you on the pros and cons of each option, specific to your circumstances.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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