



Choosing the right entity when purchasing property in NSW

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Whether you are a first home buyer or an investor, taking time to consider what entity to purchase a property under is an important consideration. Not only will the purchasing entity have an impact on ownership of the property, but it may also have financial and liability consequences that purchasers need to be aware of.

This blog explores the different types of purchasing entities available for consideration when deciding which entity to purchase property in, and considers pros and cons of each.

Purchasing property as an individual purchaser

The most common entity is purchasing a property in your individual name. This might include purchasing the property in your sole name or with your spouse in each of your individual names. You might also wish to consider purchasing property in your individual name with family, for example, with your siblings or for parents with their children.

The greatest benefit of purchasing property in individual names is that it is simple and less costly, and individuals may also be eligible for:

- principal place of residence tax concessions (if the property is occupied as their home); or
- the 50% capital gains discount when selling or disposing of the property in future.

For high-income individual investors with a property that will be negatively geared, purchasing in your individual name could also lower your taxable income. Tax advice should be sought to consider your particular circumstances and eligibility.

The downside to purchasing property as an individual purchaser is that your financial and legal liabilities are not protected. This means that your property will also be exposed to any liability that you are personally exposed to.

We recommend seeking financial and tax advice on all of your options if you are considering purchasing a property in your individual name, as everyone's individual circumstances differ.

When purchasing a property in your individual names as either a couple or with someone else, you also need to consider whether to purchase the property as [joint tenants or tenants in common](#):

1. For joint tenancies, a right of survivorship exists which means ownership of the property will automatically pass to the surviving owner upon the death of the other owner. Joint tenancies are most common with married and de facto couples.
2. Tenants in common refers to ownership of the property in defined shares. If either of the owners, as a tenant in common, dies, then ownership does not automatically pass to the surviving owner. Instead, the deceased owner's share will be disposed of as part of their estate. As a tenant in common, an owner also has a right to sell or transfer their interest in the property to a third party at any stage if they wish.

If you are thinking about purchasing a property with another individual, it is important to think about how your joint ownership will work to ensure you make the right decision on whether to purchase a property as a joint tenant or tenant in common. You may also need to consider the preparation of a [co-ownership agreement](#).

Purchasing property as a company

The two main benefits when purchasing a property under a company name are asset protection and taxation liabilities. For example, when a property is owned in a company name, the company may attract a lower rate of tax on any net rental income generated from the property.

As far as asset protection is concerned, when a property is owned by a company then an individual may also be protected from personal liability, to an extent. What this means for investors is that your personal assets are separate from the company assets, and this separation can help to protect the personal assets from liability arising from the company if the company finds itself in trouble at some stage, and vice versa.

However, purchasing a property in a company name also has significant disadvantages to consider. There are costs associated with setting up the company and managing the company, and also the taxation implications if the property being purchased is not used for business purposes.

Companies are generally not eligible for the 50% capital gains tax discount, and will be responsible for paying the full amount of capital gains tax on the property when sold. This could be a significant expense for some companies, dependent of course on the amount of the capital gain at the time the property is sold.

Principal place of residence tax concessions for land tax or capital gains tax also do not apply to a property owned by a company.

Another disadvantage of purchasing under a company name is that company loans may be harder to obtain, which could have financial implications on the proposed purchase.

We would recommend seeking financial advice and understanding the pros and cons of purchasing a property under a company name prior to deciding on the entity name under which you will be purchasing the property.

Purchasing property under a trust

Similarly to companies, purchasing property under a trust can protect an individual's legal and financial responsibilities by providing extra asset protection.

A trust is an arrangement whereby a trustee manages certain assets for the named beneficiaries of the trust. A trust arrangement can be a good solution for those wanting asset protection and can make the division of profits and assets easier when the time comes to do so, but can also lead to higher costs.

In many cases, trusts are eligible to claim the 50% capital gains tax discount, but ownership via a trust can result in higher amounts of land tax being paid. You can learn more about this in our earlier blog, ["Land tax liability when property is held in a trust"](#).

Many of the principal place of residence tax concessions would not apply to a property owned via a trust. There would also be higher costs incurred in operating and managing a trust.

Proper consideration needs to be taken when deciding whether or not to purchase property under a trust, including obtaining financial advice to ensure you are aware of the financial implications and can make an informed decision.

Purchasing property via a self-managed super fund

Purchasing a property under a self-managed super fund will only be available to individuals who meet the criteria for doing so. There are strict requirements as well as superannuation rules and regulations which relate to purchasing a property through your self-managed super fund. These need to be properly considered before deciding to purchase a property using this method.

One of the most important requirements if purchasing property under a self-managed super fund is that the investment must meet the 'sole purpose test'. There are also restrictions on the type and intended use of the property; for example, you cannot occupy or allow a family member to occupy a residential property owned within your self-managed super fund.

There are however, various benefits of purchasing a property through your self-managed super fund, such as having greater control over your superannuation investments.

When investing through a self-managed super fund it is imperative that you seek qualified and experienced financial advice from your accountant and financial advisor, as well as professional legal advice from your solicitor. Investing through your super fund can be quite complex and it is important you understand the ins and outs of these arrangements to help you make an informed decision.

Get help from a property lawyer

Our experienced property law team can help you understand your legal rights and responsibilities when it comes to choosing what entity to purchase property in. If you require any advice in relation to this or any other queries regarding purchasing a property, one of our dedicated property law solicitors would be more than happy to assist you through the process.

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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