

When you purchase property with one or more other persons, you need to decide whether you are going to hold the property as joint tenants or tenants in common.

### *Joint tenants*

If you wish to own the property as joint tenants it means that:

- You own the property in equal shares
- If one of the owners die, then their share automatically passes to the other owner (even if the Will gives that shares to someone else – the will cannot override a joint tenancy).

### *Tenants in common*

If you own the property as tenants in common:

- You can choose to own the property in equal shares, or unequally. For example, if one of you have contributed more to the property than the other, you can hold in shares comparable to the amount you have contributed.
- If one of the owners die, your Will decides who gets their shares (it will not automatically go to the other owner as it would if you owned as joint tenants).

### *When might you own property as joint tenants?*

Joint tenancy is usual in a marriage where the spouses want to hold the property equally and want the property to automatically pass to their spouse when they die.

If you do hold real estate as a joint tenant you can easily sever the joint tenancy and convert to a tenancy in common. This is something that may be done in situations where a marriage or de facto relationship has broken down.

### *When might you own property as tenants in common?*

A tenancy in common is usual in a situation where owners don't want their share to automatically go to the other owners. For example, if you buy real estate with a business partner you won't necessarily want your share in that real estate to automatically pass to your business partner. By owning the business property as tenants in common, you can deal with your share in the real estate in your will as you wish.

### *Issues to consider when deciding how to own property*

#### 1. Marriage break down

Due to the high rate of divorces, some degree of planning is essential. It is important to correctly record your particular contribution accurately. It does not, for example, always make sense to hold as joint tenants when one partner has contributed significantly more than the other.

#### 2. Asset Protection

Asset Protection could be an issue where one of the parties is exposed to greater financial risk or the threat of bankruptcy.

If one of the parties works in a high risk industry, it may be worth purchasing the property in the name of the party that is not high risk for asset protection purposes.

#### **Contacts**

Jim Main  
Brendan Cockerill  
Margot Gill  
Linda Alexander  
Amanda Tully  
John English  
Cynthia Guernier  
Karen Lewin

www.jmalegal.com.au  
Call 1800 618 869

**Cootamundra**  
46 Cooper St  
Cootamundra  
NSW 2590  
T 02 6942 1655  
F 02 6942 3692

**Canberra**  
11/60 Marcus Clarke St  
Canberra  
ACT 2601  
T 02 6243 3610  
T 02 6243 4848

**Gundagai**  
195 Sheridan St  
Gundagai  
NSW 2590  
T 02 6944 1755  
F 02 6944 1850

**Sydney**  
3 Spring St  
Sydney  
NSW 2000  
T 02 8249 4028  
T 02 8249 4872

### 3. Estate Planning

As outlined earlier, if you own property as joint tenants, your share will automatically go to the other joint tenant when you die.

Consider this scenario – a husband and wife own a farm as joint tenants. The husband dies. The property goes directly to the wife. A few years later the wife remarries and makes a new will leaving everything to her husband. The wife then dies and the farm ends up with the new husband.

When purchasing real estate you need to consider whether the above scenario is a concern. The scenario can be avoided where you own the property as tenants in common, because you could either leave your share directly to your children, or use testamentary trust wills so the wife could still have the benefit of income from your share, but the asset will be protected for the benefit of your children.

Author: Amanda Tully, JMA Legal December 2011

For further information on this issue, please see the contacts below.

#### Contacts

Jim Main  
Brendan Cockerill  
Margot Gill  
Linda Alexander  
Amanda Friend  
John English  
Cynthia Guernier  
Karen Lewin

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T 02 8249 4872

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