

Fact sheet

Tenancy

When purchasing a property with other people, the type of tenancy you choose has important consequences both during the ownership of the property and upon the death of either party.

Joint tenancy

Joint tenancy means that you own a property wholly and equally with another person (or persons). Neither party owns a specific 'share' in the asset.

Many married or defacto couples can choose to hold property as joint tenants. Joint tenancy is treated under the law of survivorship, so when one tenant dies, ownership automatically passes to the surviving owner(s). Only the last surviving owner of the property will own the property absolutely, and this person can gift the property to a third party in their will.

Benefits of joint tenancy:

- As the property automatically passes to the surviving owners upon death, you save time and money by avoiding the need to obtain a grant of probate.

Disadvantages of joint tenancy:

- Tenants cannot act separately from one another, so one tenant may not sell or mortgage their interest in the property, nor can they leave their 'share' of the property to whomever they like in their will.

Tenants in common

If a property is owned as tenants in common, the tenants each own their individual share of the property. Tenants can sell or mortgage their interest in the property separately or gift it in their will to whomever they want.

This can be the best option in the case of second marriages, especially when there are children from the first marriage. It also tends to be a more suitable option for business partners or friends who are buying a property together.

Benefits of tenancy in common:

Tenants can deal with their share of the property separately from the other parties.

- When purchasing the property, tenants can contribute different amounts and own a proportionate share of the property.
- There can be some tax benefits, particularly around capital gains tax.

Disadvantages of a tenancy in common:

- There may be some negative effects on your ability to finance other properties later on.
- If you want to change your ownership percentage, you will need to pay stamp duty charges.

What else do I need to know?

A **joint tenancy** can become a **tenancy in common** if both parties agree. This often occurs when a marriage or de facto relationship ends, when both parties no longer wish the other party to become the owner of the whole property after their death.

When purchasing a property with other people, you should discuss and agree which type of tenancy will suit your situation. Legal advice is strongly recommended before purchase to avoid problems later on.

Need help?

If you require any further information, please get in touch with your Smartline Adviser.

Important information

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