

# Estate planning

## Joint ownership of property

### Key points

- Jointly owned real estate can be held either as joint tenants or tenants-in-common
- If property is held as joint tenants, on the death of either of the joint owners, the surviving owner automatically owns the whole of the property and the property does not form part of the estate of the deceased owner
- If property is held as tenants-in-common, each owner has a separate interest and this interest can be left by a Will (or will pass by an intestacy if no Will is left)

There are the two ways that real estate can be owned jointly.

### As joint tenants

1. This means that if either of the joint owners dies, the surviving owner automatically owns the whole of the property absolutely, no matter what the Will of the deceased joint owner says about that property.
2. The share of a property owned by a joint tenant does not form part of the estate of the deceased owner.

### As tenants-in-common

3. This means that each owner has a separate interest in the property that can be left by a Will (or that will pass by an intestacy if the person does not have a Will). If one owner dies, his or her share in the property does not automatically pass to the surviving owner.
4. The share held by the deceased owner does form part of his or her estate. It will pass to the beneficiary to whom it has been gifted under his or her Will; or if no Will exists, under the intestacy provision of the *Succession Act*.
5. Tenants-in-common can own either in equal or unequal shares.

There is no right or wrong way to jointly own property as both have advantages and disadvantages.

### Some advantages of owning as joint tenants

6. In some circumstances husbands and wives own their home as joint tenants. This form of joint ownership may avoid the need to obtain probate or letters of administration when the first joint tenant dies.
7. It does not mean that joint owners who own as joint tenants should not have a properly prepared Will. The surviving joint owner will own the whole of the property and there are issues relating to the timing of deaths and joint owners dying together that need to be considered.

### Some disadvantages of owning as joint tenants

8. If joint owners own as joint tenants, neither of them will be able to leave his or her interest in the property to any other person under their Will unless they are the only surviving joint tenant.
9. If the surviving joint tenant remarries there is the possibility that any children (or other beneficiaries) of the deceased joint tenant will not ultimately benefit from the property as the deceased joint tenant may have intended. The new spouse of a surviving joint tenant may receive the property or ultimately their children.

### Some advantages of owning as tenants-in-common

10. Each separate owner has a separate interest that they can gift under their Will. If one tenant-in-common dies, his or her share in the property forms part of his or her estate.
11. If each tenant-in-common has contributed different amounts towards the purchase price, that can be taken into account.

12. Owning as tenants-in-common can also allow the joint owners the ability to leave their share according to changing circumstances over time by altering their Will rather than altering the title.

### Some disadvantages of owing as tenants-in-common

13. If a tenant-in-common dies without a Will, his or her interest will be distributed in accordance with the intestacy provisions under the *Succession Act*. A spouse receives only the first \$150,000 of an estate and then the spouse and one child take half each of the balance or if there are more than one child, the spouse takes one-third and two-thirds are held for the children.
14. It is important that there is a properly drawn Will.

### Summary

You should choose the form of ownership based on understanding the advantages and disadvantages of tenants-in-common and joint tenants.

Please sign below after making your choice as to how you want to own your property.

Joint tenants

Tenants-in-common

If tenants-in-common, please indicate the shares or proportions: \_\_\_\_\_

\_\_\_\_\_

If you would like to discuss the impact of the ownership of your property with one of the members of our succession law team, please let us know.

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