Family Law

Plain English Guide to Joint Tenancy / Tenancy in Common

When two or more people own real property together there are two ways in which their ownership of the property may be described. They can hold the property either as joint tenants or as tenants in common.

Joint Tenancy

Joint tenants together own the whole property. If one joint tenant dies then the surviving joint tenant owns the whole of the property. As a consequence of his death the deceased joint tenant no longer has an interest in the property. His interest in the property does not form part of his deceased estate and is not available for distribution to the beneficiaries of his will.

It is common for husband and wife to own a property as joint tenants though this is not always appropriate. A joint tenancy may also be used where a property is held in trust or in certain business situations.

Tenancy in Common

Tenants in common each own their individual share in the property absolutely. They may hold their respective shares equally or in some other proportion. Where a person owns an interest in a property as tenants in common with another owner, then upon the death of that person his estate continues to have an interest in the property. The deceased's interest in the property will pass according to the provisions of the deceased's will or in the absence of a will in accordance with the rules of intestacy.

A tenancy in common may be the preferred way for a couple to own property where there are children of prior relationships whose interests have to be protected. It is quite common for de facto couples and for investors buying property together to own their property in this way.

Severing a Joint Tenancy

If you own a property as joint tenants with another person it is possible unilaterally to sever the joint tenancy, that is to convert it to a tenancy in common in equal shares. This is done by lodging a form at the Land & Property Information Office. The other owner of the property and any mortgagee are notified that the form has been lodged and are given the opportunity to object. In the absence of an objection the joint tenancy is severed. This procedure is useful for a person leaving a marriage or de facto relationship who no longer wishes his or her spouse or de facto spouse to become the owner of the whole property in the event of death.

How can Mills Oakley help you?

At Mills Oakley we have a number of family lawyers and Accredited Specialists in Family Law who practise exclusively in the area of family law. As well as our practical experience in all aspects of family law, other specialist lawyers in the firm are able to contribute their expertise in areas such as commercial, taxation and property law where such issues need to be considered in dealing with your case.

We aim to provide the service that is right for you, whether that be simply advising you as to your rights and obligations, assisting you in negotiating a resolution of issues in dispute or representing you in contested proceedings in the Family Court. Where appropriate we will work with your other advisers, such as your accountant, so as to achieve a good understanding of all aspects of your case and provide you with the best possible representation.

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