



Joint Property Ownership...the choices

College Chronicle
Newsletter

March 4, 2022



Australian College
of Professionals

RTO 91513



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The trainers at the Australian College of Professionals love getting questions from students, especially when they get the same question being asked by those who have been in the industry for many years and from those who are just entering the industry.

One such question comes from the front page of the Contract for the Sale and Purchase of Land: “What is the difference between Tenants in Common and Joint Tenancy and how do I advise my purchasers?” To answer this question I must first write that you should NEVER, and I repeat NEVER be advising the purchasers on which way they should jointly purchase property. This should always be an issue they discuss with their solicitor as it can have an effect on the estate planning for the purchasers and is not something you want to get wrong. And remember, it’s outside the black box on the front page of the Contract – so you don’t touch it.

With recent news articles from mortgage lenders citing an increase in investors

pooling funds and buying property with family members and friends, it is very important that you understand what the different ownership models are to explain to the purchasers if asked. However, remember, this is something that a purchaser really needs to seek legal advice on.

Tenants in Common

Where two or more people hold land as ‘tenants in common’, each is regarded as owning a discrete interest in that land. Tenants in common are said to have an undivided share and may generally deal with that share as they wish. For example, they may sell the share or dispose of it in some other way, such as in their will. Shares held by tenants in common need not be equal; for instance, one tenant may have a three quarter interest and the other a quarter interest. Also, there may be more than two people as tenants in common.

It is advisable that people holding land as tenants in common enter into an agreement that sets out their obligations for managing the property and restricts the individual rights of disposal of individual shares

From the office

without firstly giving the other shareholders the opportunity to acquire their interest. Failure to do this could result in a third party acquiring their interest, which could severely disadvantage the other shareholders.

Joint Tenancy

Joint tenants do not have proportionate shares in the property, as do tenants in common. A good example of property owned under joint tenancy is a home purchased by a husband and wife. Each joint tenant has a right shared with others to the whole of the property but no individual right to an undivided share of the property. In practical terms this means that if one of the joint tenants predeceases the other (dies), then title to the property is automatically vested in the other. This is called the right of survivorship.

The detail and major difference between the two types of property ownership, is what happens upon the death of an owner - does it automatically revert whole ownership to the other owner (that's Joint Tenancy) or is that ownership dealt with through a will (and that's Tenants in Common). There are numerous areas that pose potential difficulties for co-owners, particularly in the areas of wills and divorce. While the question of ownership is not raised every day, it is important that you can differentiate between the two forms of co-ownership.

Rosy Sullivan

Director | College Principal

We are into the home stretch for the NSW property agents CPD year. Our trainers have been covering many kilometres across regional NSW from Coffs Harbour to Port Macquarie. Michael and Andy Madigan were both out in Orange and Dubbo running days of CPD training as well – that was of course until the rains and the floods decimated our beautiful state. Our hearts go out to the towns that have been hard hit by the weather conditions. Our trainer Michael was due to be in Ballina, Byron Bay and Tweed Heads next week and Kristine was due in Wollongong – but we are now running these large programs via interactive webinars. We still have many face-to-face courses and loads of webinars on offer right up until 22nd March.

Of course we've had cakes in the past fortnight – it's ACOP remember. We celebrated another birthday – our trainer Andy Madigan thought he'd escaped the fuss as his birthday was over a weekend – but we took it to the next level when he was in the office running training and had the most wonderful watermelon and strawberry cake (although Andy may well have preferred a steak and a beer). Further excitement in the office occurred when Rachelle returned to the office from maternity leave. Whilst she's been working a bit from home in the past months, it is just fabulous to have her back in the office and hearing her on the phone to students again. Apart from her producing the most gorgeous little boy, you would think that she's never been away.

And lastly, Martin, our BDM and Rosy frocked up (or the penguin suit for Martin) and flew the ACOP flag at the Real Estate Business Awards this week and ensured that they had a fun times with so many of our students and colleagues in the real estate industry. From all reports it was a great night and recognised the great work being done by fantastic agents throughout the country.

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