

## CO-OWNERSHIP OF REAL ESTATE

### Two Types of Co-Ownership

The two major forms of co-ownership of real estate are joint tenancy and tenancy-in-common. Both forms of co-ownership allow for simultaneous rights to possession of the whole of the property. However, there is an important distinction and consequence of each, particularly upon the death of a co-owner.

### What is a Joint Tenancy?

A joint tenancy does not hold a specific share in the jointly owned property. Rather, each joint tenant shares a right to the whole of the property that is indistinguishable from his/her other joint tenant(s) (ie. an interest of a joint tenant is not differentiated into a distinct allocated share).

This means that a joint tenant is entitled to a right of survivorship upon the death of any one or more of the other joint tenants. In such a case, the remaining joint tenant(s) will automatically be entitled to an undivided share of the whole of the property. Because the interest of a deceased joint tenant is extinguished at the moment of death, any purported disposition of the deceased joint tenant's interest through his/her Will is ineffective. In addition, the heirs of a deceased joint tenant will have no claim to the interest formerly held in joint tenancy by the deceased.

The most common form of a joint tenancy is between husband and wife. However, even if you are married, you should check the Certificate of Title to any property you own, as your property may be held as tenants-in-common.

### What is a Tenancy in Common?

Although both tenants in common and joint tenants share undivided possession of the whole of the property, unlike joint tenants, tenants-in-common have a separate and distinct share.

No right of survivorship exists between tenants-in-common, as each tenant-in-common holds a separate and distinct share from the other tenant(s)-in-common. Accordingly, their separate interests will pass through their Wills to their respective estates upon their deaths.

An example of when the appropriate type of co-ownership would be tenants-in-common is where business partners purchase property for the purpose of their joint business activities.

**DIRECTORS & NOTARIES PUBLIC**  
S. E. Creek  
M. N. Thornhill  
**ASSOCIATE DIRECTOR**  
J. M. Bon  
**COUNSEL**  
H. J. Nichols  
G. Dean  
W. McDonald  
L. Caré  
L. Adamson  
**SENIOR ASSOCIATES**  
M. W. Wallis  
N. B. Dimmock  
**ASSOCIATES**  
S. Baily  
K. Parker  
**SOLICITORS**  
S. Smith  
K. Spector  
E. Wong  
S. Coyle  
S. Wright  
**CONSULTANTS**  
R. V. Wheatley  
E. J. Wheatley  
D. J. Stewart



WA Solicitors Pty Ltd trading as  
HHG Legal Group,  
Hudson Henning & Goodman  
and Wheatleys Legal  
ACN 122 853 507  
ABN 54 122 853 507

[www.hhg.com.au](http://www.hhg.com.au)  
[reception@hhg.com.au](mailto:reception@hhg.com.au)

### Changing Co-Ownership

It is a relatively simple exercise to change a tenancy-in-common to a joint tenancy or a joint tenancy to a tenancy-in-common. In both cases, a Transfer of Land signed by all interested parties will need to be prepared, stating that you now wish for the property to be held as joint tenants or alternatively as tenants-in-common.

A registration fee of \$85.00 will be payable upon lodgement of the Transfer at the Department of Land Information and there is currently nominal stamp duty payable on a property transfer of this type.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to co-ownership of real estate or other legal matters please contact our office.

**Murray Thornhill, Director**  
**Matthew Wallis, Senior Associate**  
**Janene Bon, Commercial & Wills**

E-mail: [murray@hhg.com.au](mailto:murray@hhg.com.au)  
E-mail: [matthew@hhg.com.au](mailto:matthew@hhg.com.au)  
E-mail: [janene@hhg.com.au](mailto:janene@hhg.com.au)

Albany Ph: 08 9841 2322  
Perth Ph: 08 9322 1966  
Website: <http://www.hhg.com.au>