

PROPERTY OWNERSHIP ISSUES – SOLE OWNER, JOINT TENANTS AND TENANTS IN COMMON

*Murray Thornhill, Commercial Law & Litigation Partner & Notary Public
and
Aileen Newell, Settlement Clerk
Hudson Henning & Goodman*

Buying real estate is usually the biggest financial transaction a person will enter into in their lifetime. It therefore warrants the utmost care and attention to get the legal issues right. We recommend that any person purchasing or selling real property seek legal advice. You can request that your real estate agent co-ordinate preparation of the offer and acceptance contract with your solicitors. The security and peace of mind is worth the costs involved.

Sole Owner

There are all sorts of legal issues (as well as taxation and asset protection issues) which need to be considered before buying property as a sole owner. For example, when you buy real estate as the sole owner, a valid and up to date Will is required to ensure that your property is dealt with in accordance with your wishes. However, that Will can be challenged and your wishes for that property may not be followed, so you may wish to consider other options for ownership.

Joint Tenancy Tenants in Common

When buying real estate with another person or persons, either your lifetime partner, a family member, business partner or a close friend, you should consider the effects that this may have on your, and the other person or person's estate.

This begins by considering the differences between purchasing as 'Joint Tenants' and 'Tenants in Common' specifying shares.

When two or more people purchase property as 'tenants in common' and specify "shares" these "shares" are held as part of the person's estate when they die.

In this instance, it is the deceased person's Will or if there is no Will, the law on intestacy that determines how the property is dealt with. For example, under a Will the "share" in the property can be transferred to a beneficiary, or sold and the proceeds paid to beneficiaries. But, the "share" can be vulnerable to a challenge to the Will by a disgruntled family member.

When real estate is purchased 'as Joint Tenants', by two or more parties, on the death of any one or more of them, the property passes to the surviving registered proprietor/s 'by survivorship' and does not form part of the Estate. There may be any number of good reasons for ensuring that property is not part of your estate.

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. Ommock

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
ACH 122 853 507
ABN 64 122 853 507

www.hhg.com.au
reception@hhg.com.au

For example, it can be a way of ensuring the surviving party is left with a home and security without any risk of a claim by another family member against the estate assets.

But equally there may be a good reason for ensuring the property does from part of your estate. These are the sorts of issues you can resolve by obtaining legal advice.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to Commercial Law/Litigation or any other matters, or if we can assist you, please email us at reception@hhg.com.au.

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

Email: murray@hhg.com.au
Email: matthew@hhg.com.au
Email: Janene@hhg.com.au
Email: paul@hhg.com.au

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