

## Co-ownership of Real Property

Where two or more people own the same item of property, they do so as either joint tenants or as tenants-in-common. This article explores the similarities and differences between these two forms of ownership on the rights and obligations of the co-owners. While all property can be owned by two or more people, this discussion is only intended to apply to of co-ownership of real property (homes and land).

### Joint Tenancy

If a property is owned in the form of a joint tenancy each owner holds the property 'for nothing and for all'. This means that no co-owner has an individual interest in the property he or she can deal with separately from the other co-owners, but rather that each owner has a right to the whole of the property.

As a form of ownership, a joint tenancy's main distinguishing feature is the right of survivorship. Upon the death of a co-owner, the whole of the property remains with the surviving joint tenant(s). From a legal perspective, the surviving joint tenant(s) do not acquire anything more than they already had (as all ownership interests were acquired at the time of transfer).

The right of survivorship cannot be defeated, for example, by the terms of a Will as long as a joint tenancy remains in place. The only way to terminate a joint tenancy is through an act of severance by a co-owner during their lifetime thereby creating a tenancy-in-common. While severance is usually effected by unilateral action by one of the joint tenants, or by agreement between joint tenants, severance can also be effected by court order, bankruptcy or homicide.

### Tenancy-in-common

Co-ownership of property in the form of a tenancy-in-common entitles each owner to a distinct but undivided share of the entire property. Nonetheless, each co-owner is entitled to possession of the entire property (because it would be practically impossible to draw physical boundaries through the property reflecting each co-owners share).

As no right of survivorship applies between the co-owners, each co-owner is free to deal with his or her share of the property as they so choose. For example, a co-owner can sell their share during their lifetime or pass it to a beneficiary of their Will.

Where two parties have contributed unequally to the purchase price of a property, or assumed unequal liability under a mortgage, the co-owners are presumed in equity to hold the property as tenants-in-common according to their respective contributions.

### Co-ownership of Property

The following rights and obligations apply to all co-owners of real property:

- **Right of use and occupation** – each co-owner has the right to possess the whole of the property (and invite someone else to live on the property) provided that no other co-owner's use and enjoyment of the property is interfered with or is excluded from the property. If a co-owner excludes another co-owner from the property, the excluded co-owner is entitled to receive rent from the occupying co-owner.
- **Compensation for improvements and repairs** – a co-owner's right to compensation for making improvements to the property is a 'defensive' equity that can only be exercised in situations involving the rights of the other co-owners, for example, in an action for the sale of the property. The co-owner is entitled to recover both the costs of any improvements and a proportionate share in the increase in value of the property. A co-owner's right to compensation for improvements is not personal to the co-owner but rather an equitable charge attached to the land.
- **Liability for waste** – a co-owner can seek an injunction against another co-owner to prevent damage to the property.

**This article is of a general nature and may not apply to your specific situation. For more detailed property law advice please contact the team at Lyttletons Lawyers on (03) 8555 3895.**

**Please note that Lyttletons Lawyers new address in 2/128 Centre Dandenong Road, Dingley.**

**Raphael Gleedman  
Lyttletons Lawyers**

2/128 Centre Dandenong Road, Dingley VIC 3172  
PO Box 250, DINGLEY VIC 3172  
Ausdoc: DX 33401 Dingley

TELEPHONE: 03 8555 3895 FACSIMILE: 03 8555 3865

LYTTLETONS LAWYERS PTY LTD  
ABN: 88 163 725 077

*Liability limited by a scheme approved under Professional Standards Legislation*

lyttletonslawyers.com