

What to consider with shared ownership of land

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The basic differences between the two methods of ownership are:

Where the property is owned in joint ownership, if one owner dies, the deceased owner's share in the property will automatically belong to the surviving owner (or owners). The deceased owner's Will cannot override this.

Where the property is owned as tenants in common, if one of the owners dies, this deceased owner's share in the property will not automatically belong to the surviving owner (or

owners). Instead, the Will of the deceased owner decides who takes ownership of the deceased owner's share in the property.

While joint ownership can be simpler and more straightforward if it is intended that surviving co-owners should have automatic full ownership on the death of one owner, there are advantages to ownership as tenants in common, which include:

- Owners can still leave their share in the property to the surviving owners. However, this is something that can be decided in an owner's Will, instead of being automatic.
- Owners would have the option of leaving their share in the property on trust (for the surviving owners or anyone else) under their Wills.

Below is a good example of when trusts can be utilised to protect property:

- A couple own their property in joint ownership. One partner in the couple dies and the surviving partner receives full ownership in the property.
- The surviving partner later enters into a relationship with a new partner.
- After three years in the new relationship, the new partner claims a half share of ownership in the property.
- This results in the deceased partner's share in the property being taken by the new partner, and this means:
    - the surviving partner loses ownership of the deceased partner's half share in the property; and
    - any children from the first relationship could miss out on their deceased parent's share in the property.

If the property had been owned as tenants in common (instead of joint ownership), the deceased partner's share in the property could have been left on trust (under a life interest Will) for the surviving partner and any children. This would mean that:

- Ownership of the deceased's partner's property would not legally pass to the surviving partner; and

- Any new partner would be unable to make a claim for ownership in the deceased's partner's property, because this property would be held on trust by the surviving partner; and
- The surviving partner would still have full use and control of the deceased partner's property, and final ownership of this property could be preserved for any children of the deceased partner.

Tenancy in common ownership and life interest Wills are nothing new. They've been a popular method used for estate planning and asset protection for many decades, and as illustrated by the above example, they are an important structure to consider.

A family trust brings a whole new level and scope to estate and asset protection matters. However, if you do not have a family trust, we recommend that you consider the matters we have outlined above.

As always, we'd love to hear from you to discuss this further. Please feel free to phone us anytime on 07 578 2099.