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SOLICITORS & BARRISTERS

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# Joint Tenancy and Tenancy in Common

Many people get confused between the concepts of “Joint Tenancy” and “Tenancy in Common”.

It's not surprising, because the concepts have nothing to do with “tenancy” in the usual sense at all!

Do you know what the terms mean? And do you realize how important the distinction is? Hopefully this will help...

In NSW, there are two ways to jointly hold real estate (and some other types of assets). If you hold real estate as a “joint tenant”, this means that if one of you dies, the survivor automatically gets the deceased's share, no matter what the deceased's will might say.

On the other hand, if you own real estate as a “tenant in common”, the deceased's share goes wherever their will says.

Usually, the decision as to which way you are going to hold the property is made when you first purchase it. Many people I have met never appreciated the important ramifications that this decision can have.

One major ramification is in terms of gaining protection against your will being challenged. If you hold property as a “joint tenant”, your interest in it does not become part of your estate to be distributed under your Will. What this means is that if somebody challenges your Will, your transfer of the interest in the real estate to your surviving joint tenant cannot usually be interfered with by the Courts. This is often very important for people in second marriages.

Another important issue if you hold property as a joint tenant is the breakdown of your relationship with the other joint tenant, say for example, your spouse. In those circumstances, even if you change your will, your ex-spouse would still inherit your interest in the property if you died, which may well not be what you desire for your family, particularly your children.

There are a number of other very important considerations which arise in deciding whether to hold property as joint tenants or tenants in common. Many people are not even aware which way they hold their assets!