



By Amy Haste

amy@collinsmay.co.nz
DD: 576 1412

Lloyd Collins

lloyd@collinsmay.co.nz
DD: 576 1403

Eugene Collins

eugene@collinsmay.co.nz
DD: 576 1407

Michael Moohan

michael@collinsmay.co.nz
DD: 576 1417

Hannah Nimot

hannah@collinsmay.co.nz
DD: 576 1409

Elly-Marie Connolly

elly-marie@collinsmay.co.nz
DD: 576 1411

If you would like any of our previous newsletters or any of the our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit

PROPERTY OWNERSHIP—JOINT TENANTS vs TENANTS IN COMMON

When purchasing a property, it is important to give careful consideration to how the ownership should be structured. If you decide simply to own the property in your personal names, you can either own the property as joint tenants or as tenants in common. This decision will determine what happens to the property if one of the owners pass away and therefore should not be made without fully understanding the difference between the two forms of ownership.

Joint Tenants

As the name suggests, this form of ownership means the property is owned jointly by both/all parties. If one of the owners pass away, the ownership of the property will be automatically transferred to the survivor (s) (regardless of what the deceased's Will says) as the property does not form part of their estate. This is the most common form of ownership for couples who purchase a property together as they most often intend for the survivor to receive the whole property should one of them pass away.

Tenants in Common

This form of ownership reflects each owner's respective share in the property. Their shares do not necessarily need to be equal. For example if one owner contributed 30% of the funds towards the purchase and the second contributed 70%, their respective shares are shown on the certificate of title as follows:

Jane Brown as to a 3/10 share, John Matthews as to a 7/10 share.

The crucial difference with tenants in

common is if an owner passes away, their share does not automatically pass to the survivor upon their death. Their share forms part of their estate and is distributed in accordance with their Will.

For example Scott and his brother Joe purchased an investment property together, both contributing an equal share of funds towards the purchase. They both decided to purchase the property as tenants in common as they wished for their respective half shares to be given to their families when they pass away. They each had Wills drawn up which provided that their estates were to be given to their wives upon their death.

Sadly Joe was diagnosed with a terminal illness shortly after the property was purchased and died not long afterwards. In his Will, Joe appointed his wife as executor of his estate to act on his behalf. As Joe owned a property with someone else as tenants in common, Joe's wife Laura needed to obtain Probate in the High Court. Probate is the Court's formal recognition of the Will. Once this was granted, Joe's share of the property was able to be transferred into Laura's name as executor. The estate and Scott then sold the property and Joe's half share of the sale proceeds were given to his wife in accordance with his Will.

Should you have any further queries in relation to home ownership, please do not hesitate to contact the Collins & May Law Team.

- **The next issue covers - Terms & Conditions of Trade—How to Bind the Customer**