



Caldwell  
Martin  
Cox

Solicitors

## FACT SHEET

### Property Series –

### Do you own a property jointly with someone else?

Make sure you understand the law regarding joint ownership, and the powers (and risks) involved. Real estate can be jointly owned in one of two ways:

1. **JOINT TENANTS** – this means that two or more people own the property equally. There are no separate and distinct shares and the “right of survivorship” applies. This means that if one party dies the surviving owners are **BY LAW** the new owners of the property in equal shares. If you own property as Joint Tenants with another person you **CANNOT** leave your share of that property to another person. It must go to the surviving owner(s). Most married couples would own their home in this manner.
2. **TENANTS IN COMMON** – this is where two or more people own the property together in equal or unequal shares and those shares are specified on the Certificate of Title. The right of survivorship does **NOT** apply to real estate held as Tenants in Common, which means that you can leave your share of the property to whomever you please and a Will is therefore an essential document for this style of joint ownership.

Business partners would normally own business or investment property as Tenants in Common. Sometimes siblings who buy an acreage with two houses buy the property in this manner and we’ve certainly acted for people who have bought property in this way. Even husbands and wives buying an investment property might purchase it as Tenants in Common in uneven shares for tax reasons because one person earns significantly more than the other.

We have been involved in many cases where a dispute has arisen over property between joint owners. Some reasons that these disputes occur include:

- one owner wants to sell and the other doesn’t
- one of the owners’ marriage has broken down
- an owner wants to retire from a business
- one owner wants to use the property as security for a loan and the other won’t agree
- the owners can’t agree on the future development or use of the property, or
- one owner goes into bankruptcy or liquidation

We recommend that at the time you are buying a property with co-owners, you enter into an agreement as to what is to happen in the event of a dispute, and you ensure that you will be noted on the title deed in the appropriate way either as Joint Tenants or as Tenants in Common (in the appropriate shares). This is especially important if you aren’t equally contributing to the cost of the property or to any improvements on it. If it is a business property, then the partners might want to ensure that their interest in the property goes to their family and not to their business partner.

#### Quick Tips:

If you hold a property as a Joint Tenant with your spouse or partner but then separate, you may need to give consideration to immediately changing the manner of ownership to Tenants in Common. This would prevent your share automatically passing to them in the event of your untimely death before sorting out any property settlement. This is a quick, easy and inexpensive process and we have assisted many of our family law clients to do this.

Did you know that a co-owner (whether as a Joint Tenant or as a Tenant in Common) can force the sale of the property under the Conveyancing Act, even if the other co-owner(s) don’t wish a sale to occur? This is done by an application to the Supreme Court seeking the appointment of a trustee to sell the property. Be aware of this risk when you are considering a

joint purchase, but also be aware of this power if you are the person who needs to organise the sale of the property. We were recently involved in a matter where three of the four co-owners of a rural property were attempting to force our client to maintain her joint ownership of the property with them. We made an application on her behalf to the Supreme Court and were successful in having the property put on the market so that our client could liquidate her share.

### **Like more information?**

If you are concerned that the manner in which you hold property on title with a co-owner may not be appropriate to your particular circumstances we would recommend that you consult with one of our solicitors about this situation. It is possible to make changes now that might save a lot of expense and complication in the future.

### **About Caldwell Martin Cox**

Caldwell Martin Cox is a law firm established for over 50 years in Narellan, Camden, Picton and Tahmoor. Our specialist lawyers advise clients on family law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, business law, personal injury matters, commercial law, wills and estates.

We have a team of five family lawyers, including a Law Society Accredited Specialist in Family Law, who operate from all four offices and serve clients across a broad region.

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