

Joint Tenancy vs. Tenancy in Common: What are the differences?

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The two most common forms of real estate co-ownership in Manitoba are Joint Tenancy and Tenancy in Common. These two forms of co-ownership are fundamentally different from one another, and understanding their differences is important to determine which form of co-ownership is right for you.

Joint Tenancy

Owning real estate as joint tenants provides equal ownership to each of the owners, meaning each of the co-owners is entitled to equal shares in the property. For example, if a rental property is owned by three people as joint tenants, all three of the co-owners are entitled to equal shares of the rental income.

Co-ownership in joint tenancy also provides the “right of survivorship” which means that if one of the co-owners dies, the ownership of the property is automatically transferred to the surviving owner/s. The property is not passed down to the estate of the deceased. This is the reason why joint tenancy is often the preferred method of co-ownership when spouses are purchasing property together because if one of them were to pass away, their share of the property is transferred to the surviving spouse. This process happens without the need for probate and could avoid legal fees associated with administering the estate.

Tenancy in Common

When people own real estate as tenants in common, they each own a percentage of the property. When there are two co-owners, you might see them owning 50% of the property. However, this is not always the case as one person could own 99% of property while the other person owns 1%. Tenancy in common allows co-owners to own different percentages in the property and each co-owner can sell or borrow against their portion of ownership.

Tenancy in common also allows additional people to enter a tenancy in common arrangement, which can be beneficial for investment properties when the initial co-owners need to recoup some of their costs by selling a portion of their ownership to another party.

While co-owners of property as tenants in common own a percentage of the property, they cannot claim ownership to any specific part of the property. For example, if co-owners each own 50% of the property, it does not mean that one person owns the north half of the property while the other owns the south half, but rather each owns 50% of the entire property.

While the right of survivorship is a key feature in joint tenancy, there is no right of survivorship in tenancy in common which means that if one of the co-owners passes away, their share of the property will go to their estate, not to the surviving co-owner/s. Of course, the individual could name their co-owner as the recipient of the property, but the estate of the deceased would need to be probated/administered in order to transfer the property.

Co-ownership as tenancy in common is commonly seen where a business relationship exists. For example, when business partners are purchasing a rental property, they may choose to purchase the property as tenants in common. This ensures that their share of the property is passed to their beneficiaries (such as a spouse or children) through their estate or that they have the option to sell their portion of the property should they desire to do so.

If you are unsure about the form of co-ownership you currently have on your property or you are wondering what type of co-ownership to enter into, contact our team of real estate lawyers and they would be happy to assist you.

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