



OWNERSHIP TYPES

For Land and Property

What are the different types of land ownerships?

Land and property can be owned by one person, which is called Sole Ownership, or by two or more. When property is owned by two or more people, there are two different types of joint ownership:

- Tenants in Common
- Joint Tenancy

When two or more people are buying property, they need to consider whether to buy as Tenants in Common or Joint Tenants. These are the two ways in which several people can hold title to property in South Australia and there are important legal differences between Tenants in Common and Joint Tenants.

What are Tenants in Common?

A Tenant in Common is often used where the buyers of the property are friends, business associates or relations and they have pooled their funds to purchase the property. Married couples may also own property as Tenants in Common.

Unlike Joint Tenants when one proprietor dies, that person's interest does not automatically vest in the other Tenant(s) in Common. The Executor or Administrator must administer the will or letters of administration of the deceased proprietor. Tenants in Common may hold property in equal shares or the shares can be apportioned to reflect each owner's contribution.

Tenants in Common can request to have a separate Certificate of Title for their share of the property. This is authorised by section 74 of the Real Property Act 1886. For fees which are applicable for the issue of new titles refer to www.landservices.sa.gov.au.

What are Joint Tenants?

Joint Tenant ownership is more commonly used by married couples and others in similar relationships. It is a feature of joint tenancy that when one owner dies, the survivor is automatically entitled to become the owner of the deceased's interest in a property. Joint Tenants have one Certificate of Title issued.

Upon the death of a Joint Tenant the survivor may apply to the Lands Titles Office to become the registered proprietor of the deceased person's interest. This is explained later in this fact sheet. Joint Tenants each have an equal interest in the whole of the property unlike Tenants in Common who have distinct shares in a property.

Can I hold as a Joint Tenant within a Tenancy in Common?

Tenants in Common can be joint owners of their share. For example: A & B own a half share as Joint Tenants and C owns the other half. If A dies, A's share vests in B. Upon registration of A's death, the registered proprietors are B of a half share and C of the other half share as Tenants in Common.

Is there a limit on the number of Tenants in Common and amount of shares?

There is no limit on the number of proprietors that can be included as Tenants in Common. The minimum number is two.

Similarly, there is no restriction on the amount of shares held by each proprietor. It could be a very large share – for example, 999 undivided 1000th parts – or a very small share, such as 1 undivided 1000th part.

How do you become registered as either a Joint Tenant or a Tenant in Common?

When you buy a property your conveyancer should ask you how you wish to hold the property. This mode of holding will be stated in the Contract for Sale and Purchase.

Once settlement has taken place, a Transfer document is lodged at the Lands Titles Office. This will also state how the purchasers are to hold the land. It is very important that you understand the difference between the two and that you give your agent clear instructions. If in doubt consult your legal representative.

Can I change ownership type after the Transfer is registered?

A Transfer document will need to be lodged at the Lands Titles Office to enable this to occur. A fee will apply.

How do you remove a deceased, registered proprietor's name from the Certificate of Title?

If a person listed on a Certificate of Title as a registered proprietor dies, certain forms need to be completed and lodged with the Lands Titles Office.

- **Sole Ownership and Tenants in Common:** A Transmission Application by personal representatives (Application Form A1) must be lodged for registration at the Lands Titles Office. Evidence of death is required in the form of the Probate or Letters of Administration and Registrar's certificate of Assets and Liabilities (or photocopies) must be produced.
- **Joint Tenancy:** An Application to Register Death by Survivor (Application Form A2) must be lodged for registration at the Lands Titles Office. Evidence of death is required either in the form of a Death Certificate, Probate or Letters of Administration. A photocopy is acceptable.

Can I prepare my own documents?

If your documents are properly executed, and meet the statutory requirements, then the Lands Titles Office will accept them for registration. It is advised to seek advice from Lyon Conveyancing when dealing with real property.

Lyon Conveyancing can assist with the preparation of all associated documents required for your particular circumstances.

This fact sheet is courtesy of Land Services Group. For further information please contact Land Services Group at lsgfeedback@sa.gov.au or Lyon Conveyancing.

