

JOINT TENANTS – TENANTS IN COMMON

When land is transferred to more than one person, they can own it (be “registered on the Certificate of Title”) either as **Joint Tenants** or **Tenants in Common**.

If you register as **Joint Tenants**, you collectively own **one** interest in the land.

Ownership as Joint Tenants means, any one Joint Tenant

- is entitled to occupy the whole of the land
- has equal interest or share in the land as every other Joint Tenant
- Cannot easily sell or transfer his/her interest to anyone other than any other Joint Tenant in the same land
- Upon their death, the survivor(s) must register this death upon the Certificate of Title and once registered, the ownership vests in the surviving Joint Tenant.
- Cannot leave the share in the land to a person of his/her choice by Will, whether or not they are named as beneficiaries in the Will.
- It is usual that a husband and wife acquire land as Joint Tenants (but not essential).

In Contrast **Tenants in Common** own individual shares in an interest in the land.

A Tenant in Common

- May be entitled to occupy only a portion of the land
- May have a greater or lesser interest/share in the land than other Tenants in Common ie hold unequal shares and sometimes determined by the capital contributed by each tenant in common.
- can freely transfer his/her interest/share to anyone they choose
- Can leave his/her share in the land to a person of their choice in their Will

For example:

On the death of a Tenant in Common, his/her executor applies to Court for Probate of the Will and once granted, the estate in the land is transmitted to the executor who then transfers it to the beneficiaries named in the Will. Any existing Will needs to be re-examined if it is intended to register in this manner e.g., unrelated persons purchasing land to pass to their respective beneficiaries

A husband and wife may have reason to dispose of their estate in this way if they are Tenants in Common.

Some resources to help:

<https://www.lawhandbook.sa.gov.au/ch23s08s12.php>

<https://www.sa.gov.au/topics/housing/owning-a-property/certificates-of-title/property-and-land-ownership-types>