



BUYING PROPERTY WITH OTHERS: CO-OWNERSHIP AGREEMENTS

THE SUM IS GREATER THAN THE PARTS

Sharing the ownership of property between 2 or more people or entities is called co-ownership. The co-owners can be friends, family members or business partners.

The advantages include:

- ❖ Pooling your funds to contribute the initial equity in the property
- ❖ Combining your borrowing powers to obtain finance on the best available terms
- ❖ Sharing the initial cost of purchasing the property
- ❖ Dividing the expenses and net rental income from the property in various ways
- ❖ Accessing a greater range of potential investments
- ❖ Repaying a mortgage off quicker and increasing net return



A CO-OWNERSHIP AGREEMENT

If you are considering co-ownership, it is important to obtain legal advice to make sure that the investment proceeds smoothly at all times. There are many reasons people join forces to co-own property and the circumstances in each case differ, and it is essential to record the parties' rights and intentions in writing.

The Co-Ownership Agreement sets out the parties' legal rights and obligations and deals with all the likely foreseeable circumstances before they are, including such important issues as:

- ❖ Price and payment for the property
- ❖ The purpose of the property (eg investment, shared or sole use or a combination thereof)
- ❖ Management and contributions to payment of expenses
- ❖ Maintenance and repair
- ❖ How long the co-ownership is to last





- ❖ How a co-owner may exit the arrangement and/or sell their share in the property
- ❖ Various exit strategies
- ❖ Various important legal terms to make sure the Co-Ownership Agreement is legally binding
- ❖ Dispute resolution

Note: Co-ownership differs from the way a husband and wife might hold a property as joint tenants (where a spouse's share automatically passes to the other spouse on death), instead being held as tenants-in-common, which means the share will *not* automatically pass on death.

Co-ownership can be used for investment property or a home as well as other assets such as vehicles and aircraft.

Proper Advice

The first step is to consider and get advice on the most suitable structure for shared ownership. If you are looking at more than say 2 or 3 couples or partners, it may be better to hold the property in a limited company as trustee of a unit trust. Alternatively, the trustees of several family trusts might join each other or individuals, in co-ownership.

Example

An example co-ownership of a holiday home might be:

- ❖ John and Sally as a couple (jointly between themselves) own 1/3 of the property
- ❖ Bill and Susan through the trustee of their family trust B&S Pty Ltd, hold a 1/3 share
- ❖ Harold owns 1/3 in his own name

The parties agree that each of them will contribute equally to 60% of the purchase price and costs and to borrow the remaining 40% from a bank. They expect the investment to be cash positive but should a shortfall happen, they are each prepared and able to cover a third of that shortfall. They agree on being committed to a 5 year ownership term and give each other rights to acquire the share of a party wanting to exit before that date, at the then market value established by a licensed valuer. They have a property manager who will market the holiday home and arrange letting. Each party also has their own exclusive occupation of the holiday home for 4 weeks of each year during agreed periods, and in order to keep their tax situation simple, each is to pay the market rental when they do so.



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Getting Started

Your financial planner or real estate investment advisor is a good starting point for discussions about co-ownership. Once the likely shares, term of holding and the type and value of the property to be purchased are known, legal advice can then be obtained.

NOTE: It is important to **obtain legal advice before signing any offer and acceptance** contract in order to avoid possible expense (such as transfer duty) of revising the shares or the identity of each co-owner. Ideally, the Co-Ownership Agreement is signed before the offer and acceptance contract.

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