



RESIDENTIAL · GUIDE

Joint tenants vs. tenants in common

How two or more people can hold title, what changes on death, and why couples and co-buyers should choose deliberately.

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When two or more people buy a property together, there is a choice on the title that most people never think about and that their agent may not explain: do you hold title as joint tenants or as tenants in common? The words sound almost identical and the difference is easy to gloss over, but it decides what happens to the property when one of you dies. That is not a small thing, and it is worth getting right on purpose rather than by accident.

The core difference: what happens on death

The whole distinction comes down to one feature called the right of survivorship.

Joint tenants. You each own the whole property together, undivided. When one joint tenant dies, their interest does not pass through their will. It automatically goes to the surviving joint tenant or tenants. The survivor simply ends up owning the whole thing. This is the right of survivorship, and it is the defining feature of a joint tenancy.

Tenants in common. You each own a distinct share of the property. The shares can be equal or unequal, for example one person owns 60 percent and the other 40 percent. When a tenant in common dies, their share does not go automatically to the other owners. It passes through their estate according to their will, to whomever they have left it to.

So the question "who gets it when one of us dies" has two completely different answers depending on which form you chose.

When joint tenancy usually makes sense

Joint tenancy is the common choice for married and common-law couples buying a home together. The reasoning is simple: most couples want the survivor to keep the home automatically and without fuss if one of them dies. Survivorship does that. The home passes to the surviving partner directly, outside the estate, which is usually exactly what they intended.

When tenants in common usually makes sense

Tenants in common tends to fit situations where the owners are not a couple, or where they want their shares to go to someone other than each other:

- Business partners or investors buying a property together. Each wants their share to go to their own family or estate if they die, not to the other investor.
- Friends or relatives co-buying, for example two siblings, or a group buying an investment property, who each want to control where their share goes.
- Owners contributing unequal amounts who want the title to reflect their different shares, and who want each share to pass through their own will.
- Blended families and second marriages, where someone may want their share to go to their own children rather than automatically to their spouse. This is a frequent reason people choose tenants in common, but it usually needs to be coordinated with a proper estate plan.

A few things people get wrong

- "Joint tenancy means we split it 50/50." Not exactly. Joint tenants each own the whole, together. The defining feature is survivorship, not the split. If you specifically want defined, unequal shares, tenants in common is usually the better fit.
- "My will controls who gets my interest either way." Not for joint tenants. Survivorship overrides your will. If you are a joint tenant, you cannot leave your interest to someone else in your will, because it passes automatically to the surviving owner. People are genuinely surprised by this, and it can defeat an estate plan if nobody flagged it.
- "Once we choose, it's permanent." A joint tenancy can sometimes be changed (severed) into a tenancy in common later, which converts the ownership and ends survivorship. How and when that can happen is a legal question worth advice, but the point is the initial choice is not necessarily forever.

This choice touches your estate plan

Because the whole distinction is about what happens on death, it overlaps with your will and your estate planning. The right answer for you can depend on your family situation, what you want to happen to your share, and how it fits with the rest of your plan. There can also be tax and probate consequences that go beyond pure property law. We can explain the property-law side and make sure title is registered the way you intend, and we will tell you when a question really belongs with your estate planning lawyer or your accountant.

Bottom line

Joint tenancy means the survivor automatically takes the whole property, outside the will. Tenants in common means each owner has a share that passes through their own estate. Couples who want the survivor to keep the home usually choose joint tenancy. Co-buyers who want to control where their own share goes usually choose tenants in common. It is a deliberate decision with real consequences, so make it on purpose. Talk to us before closing so the title is registered the way you actually want it.

This is general information about how title is held in Ontario, not legal or estate planning advice for your situation. The right choice depends on your circumstances and your overall plan. Talk to us, and where needed your estate planning lawyer, before you decide.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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