



What Is The 2-Stage Test? How Is It Related To Joint Tenancy & Tenancy-In-Common?

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What Is Joint Tenancy?



Joint tenancy is a form of co-ownership which:

- 1.Has no specific shares
- 2.Each owner together owns the entire interest in the property under joint tenancy

Mr. & Mrs. Lim both own the entire interest in the property they are living in. The right of survivorship is the cornerstone of the joint tenancy because when one joint tenant dies, the title in the property devolves upon the surviving owner(s).

The deceased's interest in the property ceases automatically upon death and does not fall into his or her estate. A joint tenant cannot will away his or her interest.

This form of succession requires no intervention in the execution of any documentation and is straightforward.

The change of legal title needs to be registered where applicable (e.g. for real estate) and is typically not complicated.

Who Is This Suitable For?

This mode of property holding is more suited for co-owners under the following scenarios:

#01 ——— *Tenants are related to each other (e.g. married couple or parent and kids, siblings, etc.)*

#02 ——— *Not as an investment property*

#03 ——— *Not for future property de-coupling*



How Do You Determine Joint Tenancy Validity?

For a joint tenancy to exist, all 4 of the following unities must be fulfilled:

#01 — UNITY OF POSSESSION:

Either of the joint tenants is fully entitled to the possession of the jointly owned property as any of the other tenants.

For example, no single joint tenant can point to a substantial part of the land and claim it as his or her own.

Each joint tenant has the right to possess any part of the land so that one cannot sue the other for trespass.



#02 — UNITY OF INTEREST:

The joint tenants must have the same type of interest of the same duration and quality.

Joint tenants are entitled to the same interest.

For example, an interest in land cannot be shifted to someone else without all the joint tenants acting in concert.



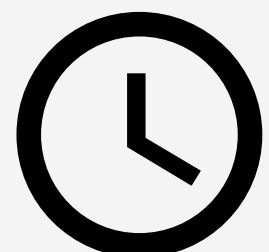
#03 — UNITY OF TITLE:

The joint tenants must derive their title from the same source (same document or transfer), e.g. the same instrument of conveyance or Will.



#04 — UNITY OF TIME:

The interests of the joint tenants must vest at the same time.



What Is Tenancy-In-Common?



Tenancy-in-common allows the owners to have a fractional interest in the property. Similar to the shareholders of a publicly listed company, each tenant's percentage does not need to be the same. They can have equal proportions (i.e. 50% - 50%) or 20% -80%, and so on. You get the idea.

There could be several reasons for this unequal arrangement. It results from an unequal contribution to the property purchase; one might pay more than the other.

Or the property is a gift. For example, the children inherited property from their parents, each with a different share.

If you hold the property as a tenancy-in-common, your share may be:

1. Willed away to your beneficiaries
2. Distributed under Intestacy rules if the deceased left no Will.

Example: Mr. & Mrs. Lim do not fulfill the four unities. Surviving co-owners do not automatically inherit property held as tenant-in-common.

Who Is This Suitable For?

This mode of property holding is more suited for co-owners under the following scenarios:

#01 ——— *Tenants are not related to each other.*

#02 ——— *May be purchasing the asset as a joint investment.*

#03 ——— *For future property de-coupling.*



When does the Presumption of Joint Tenancy Arise?



Where land is concerned, there is a presumption that persons registered as co-tenants hold the land as joint tenants unless otherwise indicated.

Section 53(1) of the Land Titles Act states that:

1. In every instrument affecting registered land, co-tenants claiming under the instrument shall, unless they are described as tenants-in-common, hold the land as joint tenants;

2. And if they are described as tenants-in-common, the shares in the registered lands to be held by them shall, subject to subsection (2), be specified in the instrument.

When does the Presumption of Tenancy-in-common Arise?

Equity will traditionally presume a tenancy-in-common in the situation below:

1. Unequal contribution to the purchase price and costs of improvements to the property
2. Family homes
3. Loans against mortgage where two or more persons lend money on the security of a mortgage which appears in joint names.
4. Partnership assets where the presumption applies even without a formal partnership agreement.

Although based on common law, there is a joint tenancy unless this presumption is rebutted by evidence to the contrary.

What Is a 2-Stage Test?

We will now look briefly into the situation of family homes and when there is an unequal distribution of the purchase price and costs incurred for the property and yet hold the property as joint tenants.

Can the party who contributed more claim to own a more significant share of the property? We resolve this question using a 2-stage test.

In Singapore, the Singapore Court of Appeal has implemented the following 2-stage test in the case of ***Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108**.

1st Stage

The court has to determine if the presumption of resulting trust arose. This means that the party who contributed more would have to adduce evidence, such as transaction records or CPF payments, that he or she indeed paid more. If so, a resulting trust would be presumed, such that the parties would be presumed to hold the property in the ratio corresponding to their contribution.

2nd Stage

However, even after the court has ascertained the existence of such a presumption, it can still be rebutted, either by contrary evidence or the presumption of advancement. Contrary evidence could include recorded agreements by the co-owners to hold the property jointly in equal shares, despite unequal contributions.

The presumption of advancement (or the presumption of gift) arises when the parties are involved in a familial relationship. If such relations exist, the law presumes that the parties intended any excess contributions to be a "gift" and that the parties intended to hold the property jointly and equally.

Such relationships may include husband and wife or even parents and child. Much would depend on the strength and nature of the relationship. Hence, just because two names are recorded in the land registry does not mean joint ownership will be interpreted inflexibly. The manner of holding the immovable property will be reflected in a registry maintained by the Singapore Land Authority (SLA).

Understand These Before You Decide To Change Your Holdings?



When you change the holdings of your private or HDB property from joint tenancy to tenancy-in-common or vice versa, you can go through a property lawyer or HDB/lawyer, respectively.

Also, you can lodge and register at the Singapore Land Authority (SLA) as part of the process. Cost definitely will be involved.

There is the scenario that the change of holdings can be done unilaterally without getting the consent of another party.

1. Usually, for private property, changing holdings from tenancy-in-common to joint tenancy ownership requires the two property owners to hold equal shares under their tenancy-in-common arrangement (i.e. 50% – 50%).
2. If the shares are not equal in the above scenario, one of them needs to agree to transfer part of their interest to the other tenant. This might be subject to stamp duties.
3. If under bank mortgage, need to get the approval of the bank.

Other factors will be taken into consideration, and legal advice should be sought when complications arise.

Conclusion

As you can see, we have to be aware of so many angles of concern. Most have a joint tenancy agreement, thinking it is the most "convenient" arrangement. However, we know that this is not the case. It depends on your needs and objectives before you decide on the choice of holding. Do think about it. After all, there is no best way to approach this.



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