



## Tenancy-in-common property ownership disputes

Tenancy-in-common ownership gives each co-owner title to and control over a fixed interest in real property. This makes it a flexible and autonomous way to own property. But what happens when the co-owners don't agree? We discuss some options below:

### **Option 1: Enter into a Co-ownership Agreement**

The co-owners may also wish to consider entering into a Co-ownership Agreement. This is a legal document which helps to record the procedure for managing the property, and can cover such things as:

- Division of any profits or losses realised in respect of the rental of the property;
- Division and payment of the operating expenses of the property between the co-owners;
- Keeping of books and records;
- The procedure for decisions relating to the property (i.e., 50% vote, 75% majority vote or unanimous vote, depending on the nature of the decision); and
- A dispute resolution process to resolve disagreements between co-owners.

Although it is preferable to sort out this type of detail from the get-go, it is never too late to enter into a Co-ownership Agreement.

### **Option 2: Third party property management**

The simplest way to ensure that a rental property is managed properly is by appointing a third-party property management agent. The agent can collect the rent and pay the expenses of the property on behalf of all the co-owners and is required to keep adequate records (which can be accessed by the co-owners) so that the co-owners can be satisfied that everything is properly accounted for. There will be a fee for the agent's services, which is usually a percentage of the annual rental income. However, it can be a small price to pay to save time, stress and arguments.

### **Option 3: Separate management and rent payment**

As an alternative to using third party property management, co-owners have the right to manage their respective 'interests' in the property separately. However, you need to first check that any Tenancy Agreement gives you the flexibility to direct the tenant to make separate rental payments.

This approach also has several practical considerations that need to be taken into account, such as:

- Whether the tenant is willing to pay different percentages of the rent into the separate accounts of the co-owners;
- Who the tenant is to go to when there is a maintenance issues; and
- How the owners' expenses will be paid (for example, by payment towards each invoice in the proportion that corresponds to each co-owner's ownership interest).



#### **Option 4: Court application**

A 'last resort' option is to apply to the Court for sale of the property (either in whole or in part).

The possible resolution that the Court may order is either the sale of the entire property (and the proceeds will be divided amongst the owners in their relevant proportions), or the purchase of a co-owner's share in the property by an interested party (i.e., another co-owner).

The major disadvantage of this option is the costs of making an application to the Court. However, in a scenario where the co-owners are in a deadlock in relation to the property, an application to the Court may be the only option.

#### **What next?**

If you would like to speak to someone about a tenancy-in-common dispute that you are currently facing, call us on [1300 654 590](tel:1300654590) or email us at [wehelp@adlvlaw.com.au](mailto:wehelp@adlvlaw.com.au).

Further information can also be found on our website at [www.adlvlaw.com.au](http://www.adlvlaw.com.au).