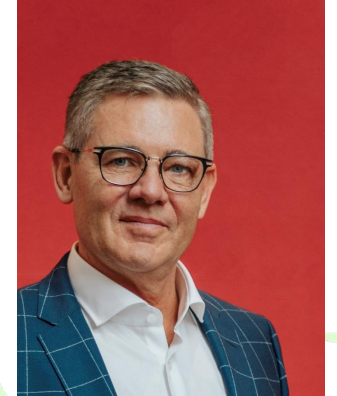


# Partnerships, JVs and Couples Agreements



***With Grant Abbott, Abbott & Mourly Lawyers and  
SAPEPAA Chairman***

**AM**  
*Abbott & Mourly*

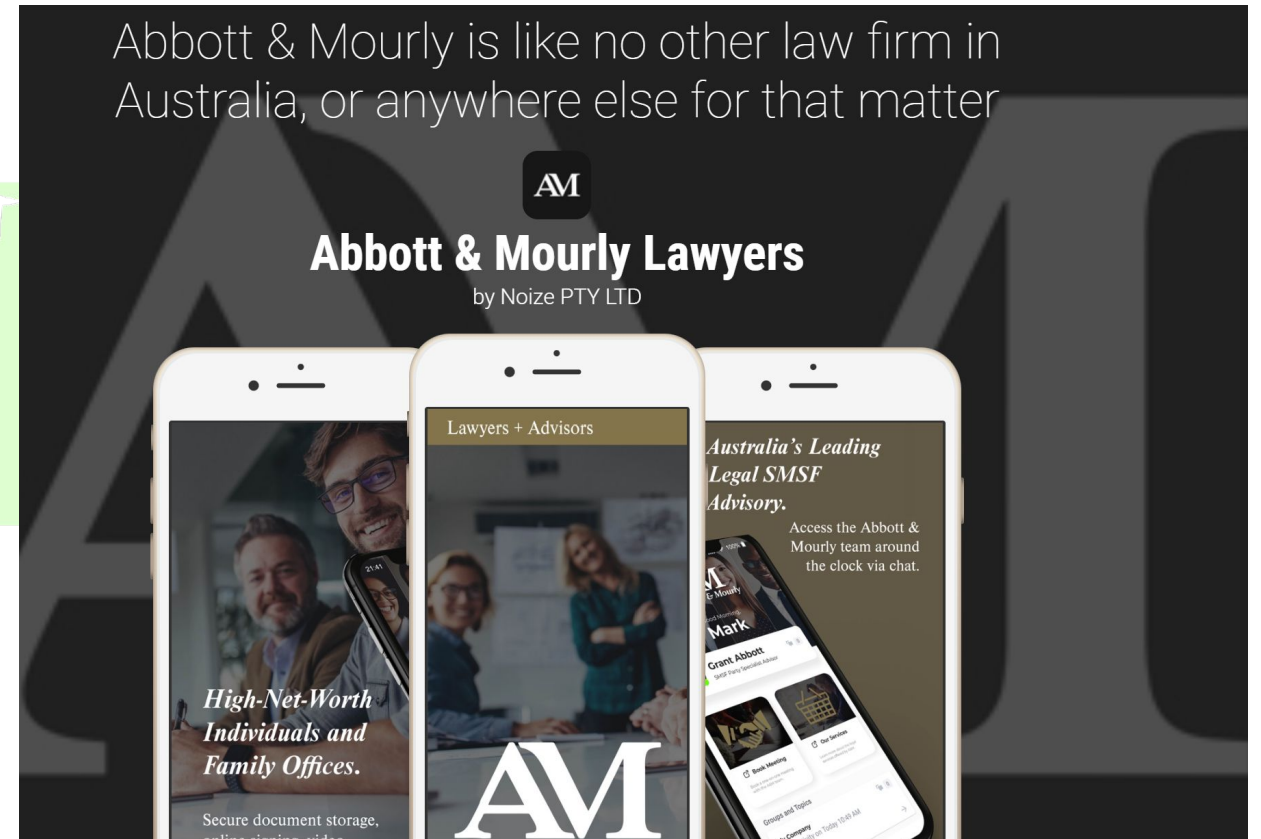
19 April 2022

# What's on at LightYear Docs

- Currently building link to Xero Practice Manager
- Will be out on the road with Xero Roadshow so come say hi at Adelaide, Sunshine Coast, Perth and Canberra
- Specialist SMSF Adviser Course on 9 – 11 May. If you do SMSFs you have to do, if you are SAPEPAA you need to do. Today's session will show you are leaving client's taxes on the table without good SMSF knowledge.
- On Thursday we have SMSF masterclass so don't

# Be careful on your legal boundaries

- All LightYear Docs templates are legal agreements are signed off by Abbott & Mourly so are standardised
- If you need something tailored then jump onto the AM app and let us know



# Tenants in Common v Joint Tenancy

## Qld Law Handbook

When two or more persons are buying property together, they must decide whether to hold the property as joint tenants or tenants in common.

Joint tenancy is a method of owning property that allows all tenants to have their names on the title as co-owners. The effect of joint tenancy is that upon the death of one of the joint tenants, their share goes automatically to the other joint tenant by a legal process known as survivorship. This rule of survivorship will apply regardless of what the deceased says in their will.

Problems can arise where one or more joint tenants wish to sell their interest but the others do not. In such a case, it may be necessary to make an application to the court under the [Property Law Act 1974 \(Qld\)](#) to have an order for partition made so that a sale can proceed.

For these reasons, joint tenancy is most suitable for a couple that intend to live permanently together and who want the property to go automatically to their partner upon death.

# Tenants in Common

## Qld Law Handbook

Tenants in common own property in individual shares, with the title being in the names of all of those buying the land. Usually, the tenants in common will be those who have provided the purchase monies. Traditionally, each person has a fractional share in the land in proportion to the amount of money they have provided towards the purchase price. If property is owned by tenants in common, on the death of one of the tenants in common, the deceased person's fractional share is distributed according to their will. If there is no will, the fractional share is distributed according to the rules that apply upon intestacy.

There is no stamp duty or capital gains tax to switch from joint tenancy to tenants in common.

Tenants in common is preferred from a succession standpoint in most cases

# Mums and Dads - Tenants in Common

RELATED PARTY PARTNERSHIP AGREEMENT

SMITH AND SMITH

**Related Party Partnership Agreement**

Start Document

**About Product**

A simple related party partnership agreement that may be used for mums and dads and other parties holding property as tenants in common.

- ▶ **\$129.00 (inc GST)** - OR provided under your unlimited membership
- ▶ The master document has been signed off by Abbott & Mourly and is congruent with Australian law.

General Information >

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# What is a Partnership? Qld Partnership Act 1891

## 5 Meaning of *partnership*

- (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (1A) Partnership includes an incorporated limited partnership.
- (2) However, the relation between members of any company or association that is—
  - (a) incorporated under the [Corporations Act](#); or
  - (b) formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter;is not a partnership within the meaning of this Act.

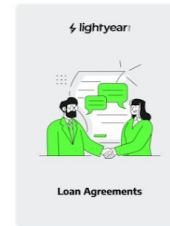


# Business Partnership

## BUSINESS PARTNERSHIP AGREEMENT

SMITH AND SMITH

SAMPLE ONLY



### Business Partnership Agreement

 Start Document

#### About Product ^

A detailed partnership agreement that may be used for two or more partners; such as business owners, joint venture partners and property developers. Can also be used for one-off ventures.

▶ **\$129.00 (inc GST)** - OR provided under your unlimited membership

▶ The master document has been signed off by Abbott & Mourly and is congruent with Australian law.

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# Butterworths legal definition of Joint Venture

*An association of persons for particular trading, commercial, mining, or other financial undertakings or endeavours with a view to mutual profit. It is not a technical legal term with a settled common law meaning: United Dominions Corp Limited v. Brian Pty Ltd (1985) 157 CLR 1; 60 ALR 741. The association is usually for the participation in a single project rather than a continuing business. A joint venture may be carried out by way of a partnership, company, trust, agency, joint ownership, or other arrangement. It may include an activity carried on by a body corporate which was formed to carry on the activity by means of joint control or ownership or shares in the body corporate: (Cth) Trade Practices Act 1974 s4J(a).*

*This definition indicates that a joint venture may be carried out in the form of a partnership, company, trust or other arrangement. While there may be different tax outcomes depending on the chosen structure, for the purpose of the risks that this Bulletin is concerned with, the term joint venture is used under its general meaning.*

# Types of JV

- Property Development is most common
- Running a business
- Holding intellectual property
- Unit Trusts and Companies are popular go to vehicles
- Or between entities for streaming purposes
- Can be between SMSF and Discretionary Trust – see ATO guidelines on property development in SMSF course

# ATO Ruling SMSFRB 2020/1

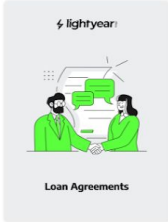
- SMSF directly – is there a business and who cares but for me a lot of direct risk in an asset protection vehicle. Plus who has that money to plunge?
- SMSF JV with Family Trust, Bucket Company, related entity or a third party. Best to have the SMSF hold the property BUT watch out any charge – mortgage or caveat
- SIS Reg 13.22C company or trust – only in extreme, last ditch circumstances
- Superannuation unrelated investment trust – my go to, stick with what works but there will be dilution

# Joint Venture

## SIMPLE PARTNERSHIP AGREEMENT

SMITH AND SMITH

SAMPLE ONLY



### Joint Venture Partnership Agreement

[Start Document](#)

#### About Product

This agreement is a simple joint venture agreement between two partners - which may be individuals or entities such as SMSFs or discretionary trusts. It is not for business - use the LightYear Docs Business Partnership nor for related party partnerships - 'mum and dad' style tenants in common partnerships, which can be found in Related Party Partnerships.

- ▶ **\$129.00 (inc GST)** - OR provided under your unlimited membership
- ▶ The master document has been signed off by Abbott & Mourly and is congruent with Australian law.

[General Information](#) >

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## If you need help

- Abbott & Mourly has completed a number of letters of advice and PBRs on JVs with a SMSF as one party covering more than 12 sections of the SISA and ITAA – a great investment
- Next Tuesday – 26 April I will be doing a session on Testamentary Trusts – ins and outs – looking at advantages of SMSF TTs v Super Proceeds Trust in a Will. A must!