

Traps in joint buying

Property sharing can be fraught with pitfalls, writes **Margaret Lomas**

WITH tax law seeming to change every day, it is difficult to know the best arrangement when buying property, and then how to make claims against tax for your share of ownership.

Investors are confused about how to apportion the title of an intended property investment and about how to make tax claims.

These studies may help clarify the process:

■ Ted and Flo own four properties and they have bought them as joint tenants. They must each declare 50 per cent of the income and they can claim 50 per cent of all expenses and on-paper deductions. When one dies, the other automatically assumes ownership. Neither can will their share to anyone else. These assets fall outside of their estate.

■ Teresa and Craig own three properties as tenants in common. Teresa owns 75 per cent of each

and Craig 25 per cent. Teresa must declare 75 per cent of all income and may claim 75 per cent of all expenses and on-paper deductions; Craig is responsible for 25 per cent. When they die, each must will their share to a party of their choice. These assets will fall inside their estate.

■ The Joneses own 10 properties as joint tenants. From employment, Mrs Jones earns income that is much higher than Mr Jones's income. Because she is the higher earner, they draw up a partnership agreement stating that Mrs Jones is essentially liable to pay more of the expenses, and therefore they have an 80/20 partnership. At tax time, Mrs Jones wants to claim 80 per cent of the rental loss. However, they are not allowed to do so because the partnership agreement cannot change their legal interest in the property, which is 50/50 at law due to the joint

tenancy.

■ The Snows own six properties as joint tenants. They do a fair bit of the work involved in letting the properties. The main source of their income remains their full-time jobs. Although heavily involved in the properties, they are not considered to be carrying out a rental property business and so have no opportunity to change the portions that each may claim (50 per cent each) due to the joint tenancy.

■ Janice and Corey own three blocks of eight units and 14 duplexes. Although they have other investment income, their entire livelihood is derived from the upkeep of these properties. Some of their properties are owned as joint tenants, some as tenants in common with various splits. They have a partnership agreement that makes them partners at law and they have elected to apportion 75 per cent of

income, expenses and deductions to the one whose personal exertion in this activity is greater. They are allowed to make their claims using this same apportionment for four reasons:

1. The size and scale of their rental activity.
2. The number of hours they spend on it.
3. Their personal involvement in the activities
4. The businesslike manner in which the activities are planned, organised and carried out.

All four reasons indicate that a person is actually carrying on the business of investing in properties, rather than simply investing in property.

You must consider your tax and estate needs before deciding on a structure.

Margaret Lomas is a financial adviser, property author and founder of Destiny Financial Solutions.



GOING, GOING, GONE: Intending investors in property face a variety of considerations — including mortgage repayments, insurance, tax liabilities and allowances and the rental market — and each should be sorted out before taking the plunge.