

An aerial photograph of a city, likely Singapore, showing numerous high-rise apartment buildings. The sun is setting in the distance, creating a bright orange and yellow glow on the horizon. The sky transitions from a deep blue at the top to a lighter yellow near the horizon. A dark blue gradient overlay covers the top half of the image, where the title text is placed.

GUIDELINES FOR MUSLIMS ON PURCHASING & OWNING PROPERTY

Office
OF THE
MUFTI

If you have any further queries, you may wish to contact Office of the Mufti through the email address info@muis.gov.sg.

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FOREWORD

The Fatwa Committee is committed to develop Fatwa thinking in Singapore. Fatwas issued must remain firmly rooted to Islamic principles, and be able to effectively provide solutions to the changing needs of the community. The Committee takes special care in assessing the benefit and harm of any given issue brought to its attention.

From time to time, the Fatwa Committee will evaluate and review the impact of fatwas. This is to ensure that fatwas continue to protect public welfare (*maslaha*). If there is feedback that points to the contrary, the Committee will study such feedback carefully and decide on how best to address such matters.

The Fatwa on home ownership in the form of joint tenancy has evolved over the last 20 years. In the first Fatwa on this issued in 1997, the Fatwa Committee viewed the joint tenancy contract as a form of shared ownership, where each joint tenant owns half of the entire property. Accordingly, when a joint tenant passes away, the surviving owner is entitled to only 50% of the property, and the remaining 50% is subject to distribution by *faraid*.

After studying the public feedback on the 1997 Fatwa, the Committee decided to review its position in 2008. The

Committee decided then that joint tenants have the option to ensure that the surviving owner will inherit the share of the deceased joint tenant if an additional document (*nuzriah* or *hibah ruqba*) is drawn up to that effect. This option allows the surviving owner to own the entire property after the death of the joint owner from a religious perspective.

The Fatwa Committee has since monitored the implications of the 2008 Fatwa. Feedback from various parties, including the religious fraternity and legal practitioners have shown that there are challenges such as problems for the surviving spouse when pressured by other beneficiaries to sell the property because the deceased had not drawn up any additional religious document. This outcome was not intended by the Fatwa, yet it continues to be a common problem faced by families. The Committee started a review of its position from last year and has now issued a new Fatwa to address such issues. In this new Fatwa, buyers who purchase a property as joint tenants can be assured that the joint tenancy contract is also religiously valid without having to draw up additional documents.

With this new Fatwa, there is a clear option for those wanting to choose right of survivorship (which is the case for most buyers), and especially in the case of a matrimonial home. Others who wish to set aside their property for *faraid* beneficiaries may opt for the tenancy-in-common contract.

Under the tenancy-in-common contract, the share of the deceased person in the house (as defined in the tenancy-in-common contract) remains intact, and hence, could be distributed according to *faraid*. Everyone needs to carefully and responsibly deliberate on the consequences of the different options. It is our responsibility to ensure that our dependants are financially stable after our passing, and not be put in a predicament of financial distress and uncertainty.

The evolution of the Fatwa on joint tenancy is a testimony of the willingness of the Fatwa Committee to understand, and if need be, address the consequences of its decision-making, and its commitment to provide solutions, guided by the principles of Islamic law. May Allah s.w.t. bless this endeavour, and continue to guide the Fatwa Committee in its efforts to issue Islamic guidance for the Muslim community in Singapore.

Dr Mohamed Fatris Bakaram
Mufti of Singapore



INTRODUCTION

Buying a property is usually an exciting process for many. However, we must not forget that the decision we make in the manner of holding the property will have a significant impact on our family members and loved ones.

JOINT TENANCY CONTRACT

Under joint tenancy, each of the co-owners together own the whole interest in the property. If one were to buy property under a **joint tenancy contract, the right of survivorship applies**. This means that upon the death of any joint owner, his interest in the property would automatically pass to the surviving joint owner. **In other words, the surviving joint owner will legally own 100% of the property after the death of the co-owner.**

TENANCY-IN-COMMON CONTRACT

Under the tenancy-in-common contract, each co-owner holds a separate and distinct share in the property. The right of survivorship does not apply. Upon the death of a co-owner, **his share of the property will form part of his estate, and be distributed accordingly.** The surviving co-owner continues to maintain his/her interest in the property as determined in the contract.

The Fatwa Committee has reviewed its position on the joint tenancy contract. This booklet seeks to highlight the main issues addressed in the Fatwa text, and other frequently-asked queries arising from this Fatwa.

FAQ



1. WHAT IS THE LATEST FATWA DECISION ON THE ISSUE OF JOINT TENANCY CONTRACT?

The 2019 Fatwa recognises the joint tenancy contract as a religiously valid contract. Muslims who purchase real property as joint tenants **do not** have to make any additional religious document (either a *hibah ruqbah* or *nuzriah*) in order for the right of survivorship to apply. It removes the need for the additional religious document previously required under the 2008 Fatwa.

2. WHY IS THIS FATWA REVIEW NECESSARY?

The Fatwa Committee has carefully monitored the implications of the 2008 Fatwa. Based on feedback gathered from various parties on the challenges that arose from the 2008 Fatwa, the Committee decided to review the Fatwa to eliminate existing difficulties in order to safeguard public interest. The 2019 Fatwa accords with the objectives and principles of Islamic Law by ensuring that the surviving joint owner's need for shelter and housing continues to be protected.

3. WHAT WAS THE 2008 FATWA DECISION, AND WHAT WERE THE FEEDBACK GIVEN ON THE FATWA?

Under the 2008 Fatwa, each joint tenant only owns 50% of the property. However, they can opt for the right of survivorship by making an additional document (*nuzriah* or *hibah ruqba*).

However, feedback received by the Fatwa Committee show that there were many owners who did not draw up *nuzriah* or *hibah ruqba* document even if they had intended to opt for the right of survivorship. This has caused difficulties for the surviving joint owners when *faraid* beneficiaries pressure them to sell the property.

There have also been cases where joint owners intended for the property to be distributed according to *faraid*, but the surviving party refuses to honour this agreement.



4. WHY IS THE JOINT TENANCY CONTRACT NOW REGARDED AS A RELIGIOUSLY VALID CONTRACT?

There are provisions within Islamic law which allows for the recognition of contemporary and new contracts which are not expressly prohibited in Islam. An Islamic legal maxim states that “the original rule in transactions is permissibility”. Although joint tenancy cannot be found in traditional Islamic law, the contract does not conflict with Islamic principles:

- a** The objective of the contract is clear,
- b** The contract does not contain any ambiguity,
- c** There are no elements of injustice or oppression, and
- d** There are no elements of deceit.



Muslims who sign on the contract must hence fulfil and abide by the conditions stated in the contract. This is based on the hadith:

“And Muslims must fulfil the conditions they have agreed upon, except the conditions that prohibit something lawful and legalize something illegal.”(At-Tirmizi)

The contract also achieves the objectives of Islamic law (*maqasid*) by ensuring that surviving owners continue to secure the basic need for shelter and housing.

5. IS THE FATWA DENYING THE RIGHTS OF THE *FARAID* BENEFICIARIES?

No. The Fatwa addresses the nature of the joint tenancy contract from an Islamic viewpoint. Since the surviving owner has full interest in the property, there is no estate left behind. This however does not mean that the option for *faraid* no longer exists. Buyers who wish to opt for *faraid* can still choose the tenancy-in- common contract. In fact, this option will ensure that upon the death of a co-owner, his/her share of the property will form part of his estate, and be distributed according to *faraid*. Buyers now have clearer options that are both religiously and legally valid.



6. IS IT RELIGIOUSLY BETTER FOR ME TO CHOOSE THE JOINT TENANCY CONTRACT OR THE TENANCY-IN-COMMON CONTRACT?

If the co-owner is your spouse, joint tenancy contract is the better option to safeguard the interest of your family in the event of your passing. Having to give up the matrimonial home after losing one's spouse would be extremely distressing and can cause serious financial burden. In fact, it is our religious responsibility to ensure that our dependants are financially stable after our passing, and not to be put in a predicament of financial distress and uncertainty.

Amir b. Sa'd reported on the authority of his father (Sa'd b. Abi Waqqas): Allah's Messenger ﷺ visited me in my illness which brought me near death in the year of *Hajjat-ul-Wada'* (Farewell Pilgrimage). I said:

"Allah's Messenger, you can well see the pain with which I am afflicted and I am a man possessing wealth, and there is none to inherit me except only one daughter. Should I give two-thirds of my property as sadaqa? He said: No. I said: Should I give half (of my property) as sadaqa? He said: No. He (further) said: Give one-third (in charity) and that is quite enough. To leave your heirs rich is better than to leave them poor, begging from people; that you would never incur

an expense seeking therewith the pleasure of Allah, but you would be rewarded therefor, even for a morsel of food that you put in the mouth of your wife.” (Muslim)

There are however other possible scenarios that may cause for tenancy-in-common contract to be a more just and appropriate option. Owners must responsibly deliberate and decide on the best choice possible according to their personal circumstances.



7. MY SPOUSE DIED LAST YEAR. SHOULD THE PREVIOUS FATWA OR THE NEW FATWA APPLY?

The 2019 Fatwa should apply if the property has not been sold and distributed. This Fatwa should not apply retrospectively to properties which have already been sold for the proceeds to be distributed to beneficiaries in accordance with the 2008 Fatwa.

8. CAN THE OTHER BENEFICIARIES FORCE ME TO SELL MY PROPERTY ACCORDING TO THE NEW FATWA?

As the surviving owner under the joint tenancy contract, you have 100% interest in the property. This means that the property is not subject to *faraid* and there are no beneficiaries involved.

Buyers who wish for distribution according to *faraid* can opt for the tenancy-in-common contract.

The Fatwa Committee would like to remind members of the public of the following:

To seek legal advice before making the decision to enter into, or to convert a contract from joint tenancy to tenancy-in-common and vice versa. All owners must be clear of the legal consequences of their decision, and the implications on the surviving owners.

To be mindful when making any decision relating to property ownership so as to not cause injustice and difficulties to living beneficiaries, especially those who would end up losing their shelter because of this decision.

9. I HAVE PREVIOUSLY DRAWN UP MY *NUZRIAH/HIBAH RUQBA* DOCUMENT IN ADDITION TO MY JOINT TENANCY CONTRACT. WHAT HAPPENS NOW?

There are 3 possible scenarios arising from this situation:

- a** If the intention of the *nuzriah* or *hibah ruqba* document is to give effect to the concept of right of survivorship, then the joint tenants do not need to do anything, as the document is in line with the 2019 Fatwa.
- b** If you have made a *nuzriah* to give the property for *faraid*, but now would like to revoke the *nuzriah* and stick to right of survivorship, then you are required to perform one of the following as a form of penalty (*kaffarah*):
 - ✦ Provide food for 10 poor people with the type of food that he usually consumes; or
 - ✦ Clothe 10 poor people; or
 - ✦ Fast for three days consecutively

On the other hand, if the document you have drawn up is the *hibah ruqba*, then there is no specific penalty incurred if the *hibah ruqba* is revoked because it is not a form of vow.

- c** If the joint tenants indicate in the *nuzriah* or *hibah* document that they wish to give their share of the property to non-joint tenant(s), then they should legally change their contract from joint tenancy to tenancy-in-common. By doing so, then they will not incur any penalty (*kaffarah*). The *nuzriah* or *hibah ruqba* document for *faraid* under a joint tenancy contract will no longer be effective from both the legal and Fatwa standpoints.

10. HOW DO I FIND OUT MORE ABOUT THE FATWA?

You may access the full Fatwa text at the following link:

<https://www.muis.gov.sg/officeofthemufti/fatwa/english-joint-tenancy>

Or scan the following QR code:





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