



JOINT TENANCY OVERVIEW

In a joint tenancy, two or more persons own undivided property shares of real estate. Along with tenancy in common, joint tenancy is one of the most common types of joint possession of real property. Joint possession means that more than one person holds interests in the title to the land.

However, joint tenancy is much different from tenancy in common. The main distinction is that joint tenants may claim the “right of survivorship,” while tenants in common may not. The right of survivorship means that if one joint tenant becomes deceased, their share of the property interest will pass to the surviving joint tenants. In many jurisdictions, the right of survivorship must be specifically claimed by the joint tenants.

How Is a Joint Tenancy Created?

In order to create a joint tenancy, the tenants must demonstrate that four conditions (the “four unities”) have been met:

- **Unity of Time:** All tenants must acquire the property at the same time.
- **Unity of Title:** All tenants have acquired the title by the same document.
- **Unity of Interests:** All tenants must hold equal interest in the land.
- **Unity of Possession:** All tenants exercise equal rights to possession.

If any of these conditions are not met, most jurisdictions will presume that a tenancy in common exists rather than joint tenancy. For example, if the tenants all acquired their interests at different times, the “unity of time” requirement is lacking- therefore, the form of title to real estate will likely be a tenancy in common.

What Are the Features of a Joint Tenancy?

Most tenants will enter into a joint tenancy arrangement in order to take advantage of these distinguishing characteristics:

- **Right of Survivorship:**
Each tenant’s share will pass to the other tenants upon death. This right usually must be stated by the tenants in the title
- **Avoid probate:**
Since the shares pass to the under tenants under the right of survivorship, this allows the tenants to avoid the costly probate process
- **Equal Use and Possession:**
Joint tenants are allowed to use and possess the entire property, even if they only own a portion or share of it
- **Rights to Rent and Profits:**
Joint tenants are entitled to a share of the rents and profits generated by the land, in proportion to the percentage that they own

On the other hand, joint tenancy can carry with it an increased amount of duties and responsibilities for the tenants. For example, all joint tenants are responsible for contributing funds for normal repairs.

How Can a Joint Tenancy be Terminated?

A joint tenancy may be terminated at any time by any of the joint tenants if any of the “four unities” listed above are disrupted. Terminating a joint tenancy before the death of one of the tenants is known as “severance”, and usually results in a tenancy in common between the remaining tenants.

For example, if a joint tenant conveys their interest to a third party through sale, then the unity of title no longer exists between the joint tenants. The joint tenancy agreement would effectively be terminated, and instead a tenancy in common would be created with the third party.

Thus, a party to a joint tenancy should consider carefully before they transfer or sell their property interest. Doing so could end the joint tenancy, and the party would lose all their rights and privileges as a joint tenant.

