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Types of Co-ownership in Colorado: Joint Tenancy & Tenants in Common

When two or more people take title together to real estate in Colorado, they will have to decide what form of co-ownership to take: joint tenancy or tenancy in common.

It is important to understand the difference between the two types of co-ownership, especially as it relates to how ownership can be severed by one of the owners and what happens to the property if an owner becomes deceased.

Tenancy in Common

Tenancy in common is presumed in Colorado law, unless joint tenancy is expressly stated in the deed.

When two or more people (natural persons) or entities (corporations, partnerships, LLCs, or trusts, for example) take title to real property as tenants in common, each co-owner has an undivided interest in the property. This interest is “freely alienable,” meaning it can be transferred by sale, gift, will, or inheritance.

In practice, this means that each co-owner has the “non-exclusive right to possession of the entire property.” At the same time, each co-owner also has the right to mortgage, sell, or otherwise transfer his own interest in the property without the consent of the other owners.

There can be any number of tenants in common. Their interests do not have to be equal but do have to add up to 100%.

Severance of tenancy in common:

Upon the death of a co-owner, the deceased co-owner’s interest will pass to his or her heirs, based on that person’s will or the state’s law of intestate succession. The probate requirements must be met, including the appointment of a personal representative and the recording of the personal representative’s deed conveying the interest of the deceased co-owner.

If a co-owner is an entity (a corporation, partnership, trust, LLC, etc.) and the entity terminates, the entity’s interest must be conveyed by a suitable deed executed by representatives of the entity in accordance with the state’s laws for that type of entity.

Joint Tenancy

Joint tenancy can only be created if expressly stated in the deed.

To create a co-ownership in joint tenancy, the instrument conveying the property must state that the property is conveyed to the grantees in joint tenancy or as joint tenants. This can be done using the phrase “as joint





tenants with right of survivorship” or “in joint tenancy with right of survivorship,” or by using the abbreviation “JTWROS,” which stands for either of the two phrases.

The number of joint tenants is not limited to two persons. There can be any number of joint tenants. Prior to 2008, joint tenants had to hold equal interests in the property; after the passage of HB 1248, effective April 25, 2008, the interests of joint tenants no longer have to be equal but must still add up to 100%.

Joint tenancy can only be created between natural persons (no entities) for the obvious reason that the joint tenancy is terminated upon death of one of the joint tenants.

Severance of a joint tenancy:

As in a tenancy in common, each joint tenant also has the right to mortgage, sell, or otherwise transfer his own interest in the property without the consent of other joint tenants. Doing so, however, may result in the severance of the joint tenancy.

On the death of any one of the joint tenants, the remaining joint tenants will continue to own the whole property including the interest of the deceased joint tenant. There is no need for probate or any deed conveying the interest of the deceased joint tenant to the remaining joint tenants. The interest of the deceased joint tenant does not pass to the heirs. (A death certificate and supplementary affidavit must be recorded in the county where the property is situated.) The remaining joint tenants will acquire the interest of the deceased joint tenant free of all liens that may have attached to the interest of the deceased joint tenant.

A joint tenancy between two persons will be severed if one of the joint tenants conveys his interest to a third party. The remaining owner and the new owner will hold the property as tenants in common.

When property is held in joint tenancy by three or more joint tenants, a conveyance by one of them will destroy the joint tenancy only as to the grantor’s interest. The other remaining joint tenants will continue to hold property in joint tenancy between themselves, while the grantee holds his interest as a tenant in common with them.

If one of the joint tenants encumbers his interest, the joint tenancy continues. If the mortgage or deed of trust is foreclosed, or a judgment creditor forecloses on the judgment against one of the joint tenants, the grantee under a Public Trustee’s Deed or Sheriff’s Deed will acquire that interest as a tenant in common with the remaining joint tenants. The filing of a petition of bankruptcy by any joint tenant, however, will not automatically sever the joint tenancy.

For joint tenants who are married, the granting of a decree of divorce will automatically terminate the joint tenancy, and the former spouses will hold the property instead as tenants in common.

If one of the joint tenants is murdered by another joint tenant, the perpetrator cannot acquire the interest of the deceased joint tenant.



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