

# Understanding Tenancy – Co- Owning Property

When two or more individuals own property – whether it's a condominium, a home, or a piece of land – the relationship between the owners is very important. The form of ownership of the property affects how property is transferred to someone else. It is important to make sure you have the right form of ownership for your property.

**Tenancy in common** allows an owner the greatest flexibility to transfer the property as he or she wants. Each co-tenant in a tenancy in common has an interest in the property and is free to transfer this interest during life or through a will. The co-tenants can have different ownership interests; for example, three owners could own 5 percent, 35 percent and 60 percent of the property, respectively, as tenants in common. Each tenant can sever their relationship with the other tenants by conveying their interest to another party. This third party then becomes a tenant in common with the other owners.

**Joint tenants**, on the other hand, must have equal ownership interests in the property. So, three owners would each have a one-third interest in the property. If one of the joint tenants dies, his or her interest immediately ceases to exist and the remaining joint tenants own the entire property. The advantage to joint tenancy is that it avoids having an owner's interest probated upon his death.

A disadvantage to both joint tenancy and tenancy in common, however, is that creditors can attach the tenant's property to satisfy a debt. So, for example, if a co-tenant defaults on debts, his creditors can sue in a "partition proceeding" to have the property interests divided and the property sold, even over the other owners' objections.

A third form of tenancy that is allowed in several states, including Maryland and D.C., **tenancy by the entirety**, avoids this problem, but it is available only to married couples. Tenancy by the entirety is based on the societal value of protecting the family. One tenant cannot convey her interest on her own, unlike with the other tenancies. Upon the death of one spouse, his or her interest automatically passes to the other spouse, as with joint tenancy, and the creditors of one spouse cannot attach the property or force its sale to recover debts unless both spouses consent.

Creditors may place a lien on property held in tenancy by the entirety, but they are out of luck if the debtor dies before the other spouse, who will take ownership of the property free and clear of the debt. This is why both husband and wife are required to sign the mortgage on their property for the mortgage to be valid. Unmarried couples who buy property and subsequently marry each other should re-title the deed as tenants by the entirety to avail themselves of the greater protections this form of tenancy offers.

In most states, if the form of tenancy that the tenants intended is ambiguous, the tenancy will be assumed to be a tenancy in common.

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