



SECURITY
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TECHNICAL TIPS

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Joint Tenancy issues clarified with House Bill 08-1248

CORRECTION and UPDATE

The July 2008 newsletter entitled Well Disclosure referred to HB1041 when in fact it should have read HB 1014...in addition, it was reported that the subject house bill would take effect in 2008 when in fact it takes effect on Jan. 1, 2009. However, there is no time like the present to start implementing what our law makers so decided in order to assist and provide current well information to the consumer. Having just attended The Continuing Legal Education in Colorado, Inc "real estate symposium" July 17, 18 and 19 in Keystone, Kent Jay Levine, Esq. did report that the real estate commission contract which will be mandatory 1-09 will include under Water Rights 3.1.6 the following disclosure concerning wells:

If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to the Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing.

"In **Colorado law**, joint tenancy is the doctrine of the four unities of **time, title, interest and possession are part of the law**. To be more specific:

The common law doctrine that a joint tenancy is created by conveyance or devise of real property to two or more persons at the same **time** of the same **title** to the same **interest** with the same right of **possession** and includes the right of survivorship.

Once persons are established as joint tenants, the question then arises as to how does one **sever** joint tenancy later in the chain of title. HB 08-1248 seeks to clarify that on going question as follows:

1. A joint tenant may sever the joint tenancy between him or herself and all remaining joint tenants by **unilaterally** executing and recording an instrument conveying his or her interest in real property to himself or herself as a tenant in common...if there are two or more remaining joint tenants, they shall continue to be joint tenants as among themselves
2. Filing a petition in bankruptcy by a joint tenant shall **not** sever a joint tenancy
3. The interest in joint tenancy may be equal or unequal...the interests are **presumed to be equal** when the persons are **without notice of unequal interests** relying on an instrument recorded, rebuttable for all other persons (claims for equitable relief as among joint tenants, including but not limited to partition and accounting will **not** be barred)
4. Upon the **death** of a joint tenant, the deceased joint tenant's interest is **terminated**...the surviving joint tenant, his or her interest in the property shall continue free of the deceased joint tenant's interest...in the case of two or more surviving joint tenants, their interests shall continue in proportion to their respective interests at the time the joint tenancy was created
5. For purposes of the "Colorado Medical Assistance Act", a joint tenancy shall be deemed to be a joint tenancy with **equal interests** among the joint tenants regardless of the language in the deed or other instrument creating the joint tenancy

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Joint tenancy is a form of ownership available in nearly every state and **in Colorado** joint tenancy is utilized for personal as well as real property from homes to bank accounts. **Joint tenancy** is a probate avoidance device allowing a surviving tenant to acquire the deceased's joint tenant's interest by operation of law without the need to probate the deceased's interest. However, **joint tenancy** cannot stop liens against one tenant from attaching to the entire interest of all joint tenants. Several years ago, Colorado's legislature created an instrument known as a **beneficiary deed** which a person can execute and record before death conveying the subject property to a beneficiary without the need for probate after the death of the grantor.

Joint tenancy equates to a right of ownership by reason of survivorship in the remaining living joint tenant or tenants. The act of recording the death certificate and supplemental affidavit, if there is a name variance between the name on the death certificate and the name on the deed, will provide evidence to a title examiner to reflect the remaining vested interest in the remaining living joint tenant or tenants by operation of law. Death Certificates in a foreign language will need to be accompanied with a certified translation of the instrument before recording.

When a death certificate is **not available** or somehow not properly filmed during recordation in a clerk and recorders office, CRS 38-31-103 will permit an affidavit, properly sworn by two or more disinterested persons who are residents of the State of Colorado and who have no record in the property affected by such tenancy, to be placed of record in substitution for the missing death certificate. When recorded, this

“affidavit shall be accepted in all courts in the State of Colorado as prima facie proof of the facts herein stated including **“Proof of death-certificate of death unavailable”**”.

In Colorado, statutes and case law presumes tenancy in common unless joint tenancy is specifically created when two or more individuals acquire title.

The other tenancy Colorado recognizes is **“Tenant in Common”** when two or more individuals hold title. **Undivided interests** in the tenants define this tenancy. **Tenant in common interest must be probated upon the death of a tenant.** Individuals should review the desired tenancy before acquiring property. Estate planning to utilize ones Unified lifetime exemption may be maximized by employing **tenancy in common** when property is held by more than one tenant. **Competent financial planners or estate attorneys should be consulted before one chooses a form of tenancy.**

When two individuals own real property as **tenants in common** and there is **no** specifically stated percentage of ownership, then it is assumed both parties each own an undivided 50% interest. This logic similarly applies to multiple owners when the percentage of ownership is not stated. Creditors can attach an undivided interest and force a sale in Colorado. The proceeds would be split based on the percentage of ownership each party owned.

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