

Joint ownership and the law of succession

What is joint ownership?

This is a situation in which two or more persons have decided to come together to co-own or to jointly own some property. This type of property ownership comes in three forms. These are:

- a) Joint Tenancy
- b) Tenancy in common, and;
- c) Tenancy by Entirety

a) What is Joint Tenancy?

Under this type of tenancy, tenants own the whole or part of the property jointly. There is no portion allocated to just a particular tenant, meaning that no particular Tenant enjoys dominance over the others. In other words, there is no specific share of an asset or property in land specifically to one Tenant in the joint tenancy for as long as the Joint Tenancy subsists. The Tenants are equal in all measures of all the property involved for as long as the joint tenancy is subsisting. Essentially, the joint tenants have equal entitlement to profits and rents and all interest in the property in question.

What conditions must be met to prove joint tenancy?

- The property must be acquired by all tenants at the same period
- The interest in the property must be equal to all tenants
- Title to the property was acquired by the same will or deed
- There is an equal right to possession by all tenants

If any one of the four conditions has not been met, or if it is unclear whether a joint tenancy has been formed, most courts will presume that the more favoured tenancy in common has been formed.

When does a joint tenancy end?

- In the case of bankruptcy of a joint tenant
- The tenants can also transfer the property to one of them and end the joint tenancy.
- When there has been a conversion of the tenancy into a tenancy in common voluntarily or otherwise

- When someone else has acquired the property through purchasing
- All the other tenants except for one have passed on

It should be noted that The Doctrine of Survivorship applies on joint tenancy such that should there be death of one partner, the surviving partner assumes the property in question alone. In light of the foregoing, the law of succession will not apply on this type of tenancy because the property held under this tenancy does not form part of the estate of the tenant that dies. For that reason, a tenant under joint tenancy cannot will away a portion or the whole of the property jointly owned under this tenancy.

b) What is a Tenancy in common

This type of tenancy on the other hand is co-ownership of property held in common with other tenants. The difference between this and the joint tenancy is that in former, the estate of the deceased forms part of the deceased's property and the portion of the deceased's in the joint property can be willed away under the law of succession.

If you are interested in estate planning, property owned jointly through this tenancy should not be left out.

How does a tenancy in common lapse?

- If the property with all shares thereto was sold to another person
- It can also lapse where one owner acquires all shares in the property
- Where all tenants convert a beneficial joint tenancy

The beauty about tenancy in common derives from its ability to be transferred during the lifetime of the tenant or later devolve during the process under the law of probate. It is the most preferred type of tenancy because it is flexible and therefore does not let the property of one tenant disappear into the hands of third-parties. Your interest in this type of tenancy is safe and can be acquired by your children in the unfortunate case of your demise.