



Types of Ownership and Tenancy September 2004

There are several different ways to hold title to real property in Colorado, and the way one chooses to go into title is important because it affects what the owner can do with the property while he owns it, as well as what happens to the property upon his death.

The four main types of ownership are sole ownership, tenancy in common, joint tenancy, and life estate.

Sole Ownership

A person who owns property solely in his name owns all rights to the property. That person can use it, rent it, sell it, or give it away.

A sole owner transfers property upon death by a will, trust, or beneficiary deed. If no one has been designated to receive the property, the property passes to the sole owner's legal heirs upon death.

Tenancy in Common

Unless the ownership document states otherwise, property held by two or more people is held as tenants in common. A tenant in common is a person who owns a percentage of the entire property, and each tenant owns undivided interest with no right of survivorship. Each tenant has a non-exclusive right to possession and exclusive right to sell, mortgage, or otherwise deal with the property. The fractional interests owned by the tenants in common do not have to be equal nor must they be created at the same time, but they must total 100%.

A tenant in common may sell his interest in the property to others. He can also transfer his interest in a property through a will,

trust, or beneficiary deed. If a tenant in common has not appointed a specific person or persons to receive interest in the property at the time of death, his interest passes to his heirs. The recipient(s) of the interest in the property then hold title with the other tenants in common.

Upon the death of one of the tenants in common, for natural persons, that interest passes to the tenants at law. This is determined by the probate code in effect at the time of the death of the tenant.

Tenants in common who cannot agree how to sell or manage the property may have to settle their differences in court.

Joint Tenancy

Joint tenancy exists when real property is owned by two or more persons, each having an equal right to use, possess, and enjoy the property.

Joint tenancy includes the right of survivorship, which assures that title vests with the surviving owner(s) upon the death of an owner. In order to insure the title vesting in the survivor(s), the death certificate for the deceased party must be recorded. If the name on the death certificate does not match exactly the way the owner held title, a supplemental affidavit must be recorded as well.

Many married couples hold title as joint tenants, insuring that the property will automatically vest in the surviving spouse's name upon the death of one spouse. However, friends, relatives, and business partners also employ this form of ownership when they want to own property jointly and pass it on to the surviving owner(s) upon death.

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Four unities must exist for the creation and continuance of a joint tenancy:

- 1. Time:** The interest of all joint tenants must be created at the same time and by the same instrument. The joint tenancy must continue for all tenants for the same period of time.
- 2. Title:** The unity of title requires that all joint tenants be vested equally with the same property rights (e.g., fee, leasehold, etc.)
- 3. Interest:** All joint tenants must have an identically equal interest. No joint tenant may have a greater interest than any other joint tenant.
- 4. Possession:** All joint tenants must have an equal right of possession in the property.

The party who dies first cannot transfer by will the property that is held subject to a right of survivorship. A joint tenant wishing to pass property to a specific person or entity other than other joint tenants should contact an attorney for advice.

There are other risks and legal consequences of creating a right of survivorship when taking title, including:

- A person who signs a deed transferring real property to himself and someone other than his spouse that includes a right of survivorship may have made a gift, which may require filing a federal gift tax return.
- Once a person signs a deed creating a right of survivorship, the original owner cannot take the property back. Selling or mortgaging the property will require the agreement and signature of the other person named on the deed.
- The property held with a right of survivorship passes to the surviving owner. Even if one owner names someone else to receive the property in his will, the deed creating the right of survivorship supercedes the will and may cause the

property to go to someone other than the intended heirs.

- The creditor to one of the co-owners with a right of survivorship may be able to take all or part of the property in order to pay debts.
- There may be gift and/or estate tax consequences to titling property in joint tenancy. Owners considering joint tenancy should discuss with an attorney the advantages and disadvantages of rights of survivorship before taking title as joint tenants.

Life Estate

A life estate is created to protect a person's right to live on a piece of property and receive income generated by the property. At the person's death, the property held in the life estate passes to another person. For example, an owner may want to give his property to a friend or to his children, but he may want to live on the property until his death; by creating a life estate, he would deed the property to the intended recipient, reserving a life estate until the time of death.

A life estate should be created by a reservation in a deed but it can also be created through a will; however, for the life estate to become effective in the instance of a will, it must be placed of public record.

Beneficiary deeds work the opposite of a life estate in that the owner uses a beneficiary deed to create a conveyance that will not take place until sometime in the future upon their death. The owner still retains title to their property until his death.

For more information or legal advice about these and other types of ownership, please consult an attorney.

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