

REAL ESTATE OWNERSHIP SYNOPSIS AND TENANCY COMPARISON INFORMATION

When two or more people take title to property, there are variations in the manner in which they will hold title to that property. Their interests in the property, their rights to use of the property, the rights of other to the property following their death and the rights of others like mortgage lender and judgment creditors are all governed by the type of tenancy specified in the deed. There are three basic forms of tenancy between two or more persons – (i) Tenants in Common, (ii) Joint Tenants and (iii) Tenants by the Entireties. Below is a brief discussion of the differences between the types of tenancies. Someone asking about tenancy must receive the advice from an attorney.

TENANTS IN COMMON: If nothing is stated in a deed about tenancy, the law dictates that the co-owners hold title as Tenants in Common. Each tenant in common holds an undivided fractional interest to the entire property. The interests do not have to be equal (i.e. 60/40 or 90/10). Upon the death of an individual co-owner, his/her interest in the property must be transferred by his/her personal representative for distribution to heirs. An entity's interest would transfer in keeping with the laws governing dissolution. If a judgment is entered against one of the co-owners in the county in which the property is located, a lien automatically attaches to the property up to the amount of the co-owner's interest.

JOINT TENANTS: Under a joint tenancy, the co-owner holds an equal undivided interest in direct proportion to the number of joint tenants (i.e., 2 joint tenants = 50/50, 4 joint tenants = 25/25/25/25). Upon the death of a joint tenant, title to the property transfers, jointly and automatically, to the surviving joint tenants. Joint tenancy requires that all co-owners have equal (i) **title** (ii) **interest** (iii) right to **possession** and/or use of the property, (iv) all during the same **time** period. If any of these unities are disturbed, title reverts to tenants in common and the privileges associated with joint tenancy are lost. If a judgment is entered or enrolled in the county in which the property is located against one of the co-owners, the lien does not attach unless the creditor petitions the court to levy on the property. A levy against any one co-owner destroys the unity of possession; as a result, the joint tenancy reverts to a tenancy in common. Thereafter **any judgment** against **any co-owner** entered or enrolled in the county in which the property is located **will attach after the levy** up to the amount of that co-owner's respective interest.

TENANTS BY THE ENTIRETIES: Tenants by the entireties is a form of special form of joint tenancy shared by husband and wife. Each has a 50% undivided interest in and to the property with full title automatically transferring to the survivor. A lien will not attach to the property unless (i) it is either against both spouses or (ii) it is a federal tax lien. This form of tenancy is only available to a married man and woman. If unmarried individuals attempt to take title as tenants by the entireties (even if their marriage is the next day) they will only wind up with as joint tenants. Should the husband and wife divorce, the tenants by the entireties is converted, by law, to a tenants in common. If a couple divorces and then remarries, they remain tenants in common unless they record a new deed changing back to tenants by the entireties.

SOLE OWNER: The property is conveyed to one owner who has the exclusive use and benefit of the property and the right to dispose of it. In Maryland, ownership is not subject to rights of Dower or Curtesy. Since 1970, upon the death of a sole owner, the property must be conveyed by the owner's personal representative or administrator.

Form of Tenancy	Tenants in Common	Joint Tenancy	Tenants by the Entireties
Creation	By Deed (before 1970 also by Will)	By Deed (before 1970 also by Will)	By Deed (before 1970 also by Will)
Identity of Tenants	2 or more persons identified in the deed or conveyance	2 or more persons identified in the deed or conveyance	Husband and wife identified in the deed or conveyance
How Interests Are Held	Fractional shares as set forth in deed; may or may not be equal	Equal shares	Husband and wife hold property as single unit
Nature of Interest	Undivided	Undivided	Undivided
Right of Survivorship	None transferred to heirs or devisees by personal representative	Automatic transfer in equal shares to surviving co-tenants	Automatic transfer to surviving spouse
Judgment/Tax Liens against 1 co-tenant attach?	Automatically up to amount of co-tenant's interest	After specific request by judgment/lien creditor and levy by sheriff	No unless judgment/lien is against both EXCEPTION – Federal tax lien against 1 can be enforced
Right of co-tenant to sell his/her interest	Yes	No (Attempt to do so may sever tenancy)	No
Responsibility for expenses of ownership (taxes, mortgage, etc.)	Shared in proportion to fractional share	Equal	Equal
Right to Partition	Yes	Yes	No, except in event of divorce
Debts of Individual Co-owner attach to:	Co-owner's interest in the property but not to property as a whole	Co-owner's interest in the property but not to property as a whole	Don't attach