

PROBLEMS CREATED BY "THE RIGHT OF SURVIVORSHIP"

Recently I had the difficult job of telling a middle aged man that he had no legal right or interest in a house his mother and aunt had received from his grandparents. While alive, his grandparents signed a deed adding the mother and aunt as joint tenants on the property. The grandparents died some time ago, leaving only the mother and aunt on title. The man's mother died early last year and then his aunt died about four months later. Had his aunt died before his mother died, he would have been the sole owner of the property; however, since his aunt was the last to die, the property went to *her* children and he received nothing.

This case points out a common problem -- many people use joint tenancy deeds to create joint interests in real estate without understanding the full impact of joint tenancy. Joint tenancy, by legal definition, carries with it the right of survivorship so that only the heirs of the last person to die have a claim to the property. Many people are not aware of a viable alternative -- holding property as tenants in common. By holding property as tenants in common, each co-owner can leave his or her share to whomever he or she wishes. Also, for tenants in common, the shares do not have to be equal. The following illustrates the difference between the two types of property title.

Let's assume a house is owned by three sisters (Mary, Martha, and Marie). Under joint tenancy, the sisters all have an equal interest in the house. When one sister dies, she loses all of her interest in the house and it automatically passes to the two remaining sisters. Even if that sister had prepared a will or a living trust naming someone else as the beneficiary of her share, it cannot override the joint tenancy designation on the deed. Likewise, the second sister to die cannot leave her interest in the house to her heirs. When she dies, it will automatically go to the last sister. Only the last sister to die will control the final disposition of the property.

Under tenancy in common, all three of the sisters will be able to leave their interest in the house to their respective heirs. When the first sister dies, her heirs will take her share. This goes for the other two sisters as well. If this had been the case presented by the man I mentioned at the beginning of this article, he would have owned his mother's third of the property instead of no interest at all.

Are you sure that the manner in which you, your parents and other relatives hold property is the best way for all concerned? If property is held in joint tenancy, there are ways to break the joint tenancy and convert the ownership to tenancy in common. This way the harsh consequences of the right of survivorship inherent in joint tenancy can be avoided.