

FORMS OF CO-OWNERSHIP

By: Roger Truemper, Esquire

UNMARRIED PERSONS

There are two forms of ownership in which **unmarried persons** can own property together. One form is termed "joint tenants with the right of survivorship". The other form is termed "tenants in common". Each of these forms of ownership have separate and distinct characteristics.

Joint Tenancy. Under a joint tenancy, each tenant owns an undivided interest in the whole estate. The distinguishing characteristic of the joint tenancy is the right of survivorship. The right of survivorship means that when one joint tenant dies, the remaining joint tenant retains ownership of the entire estate no longer subject to the interest of the deceased co-tenant. Also, under a joint tenancy, since each tenant owns an undivided interest in the whole, a creditor of one joint tenant does not have rights to execute and force a sale of the property while the property is jointly owned.

Tenants in Common. Under tenant in common, each tenant has a distinct undivided, separate interest in the property. There is no right of survivorship under the tenants in common form of joint ownership. Upon death of a co-tenant, the separate interest in the property pass by succession to that co-tenant's heirs. Also, each interest may be separately conveyed by deed or devised by will. With respect to creditors, the interest of a co-tenant is subject to the claims of the co-tenant's creditors.

MARRIED PERSONS

In Delaware a husband and wife may hold title jointly as tenants by the entirety, joint tenants or as tenants-in-common.

Tenants by the Entireties. In Delaware a deed of conveyance into both husband and wife without specifying the nature of the tenancy creates a tenancy by the entirety. Thus, there is a presumption that property owned by spouses will hold title as tenants by the entirety.

A tenancy by the entirety cannot be severed by act of one spouse without the consent of the other. Such estate may be severed by death of one, joint action, divorce or other circumstances by which the essential unity of the parties has been destroyed. Upon final entry of divorce, the parties to the tenancy by the entirety become tenants-in-common.

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When land is held as tenants by the entirety, a judgment or other lien (except federal tax liens) against one spouse is not, during the joint lives of the spouses, a lien on the property. Such liens are deemed to be an inchoate lien in the property that can be defeated by conveyance of the property while the property is still owned as tenants by the entirety. With respect to federal tax liens, the United States Supreme Court in *United States v. Craft*, 535 U.S. 274 (2002) ruled that a federal tax lien against one spouse is attachable against property held by a husband and wife as tenants by the entirety.

Under an estate held as tenants by the entirety, each spouse owns the whole estate while both live and at death of either, the surviving spouse continues to own the whole and title vests solely in such survivor.

Same-Sex Marriage

The Civil Marriage Equality and Religious Freedom Act of 2013 gave same-sex couples the right to marry in Delaware and afforded such couples the same rights as married couples of different genders including the right to own real property as tenants by the entirety. The Act ended the former right to enter into civil unions in Delaware and converted existing Delaware civil unions into marriages. The Act further recognizes couples who have marriages, civil unions or registered domestic partnerships from other states as spouses for all purposes.

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