

TENANCY IN COMMON VS JOINT TENANCY

When two or more buyers are purchasing a home, one of the most important decisions they will make is how they will be vested with the property, either as tenants in common or as joint tenants. Deciding which type of tenancy would be most beneficial to the buyers of a property depends on the circumstances of the purchase (e.g. investment, principal residence, estate planning, etc.) and the relationship of the parties (e.g. married, siblings, parent and children, etc.). It is suggested that potential buyers discuss these matters with an attorney in order to make an informed decision.

TENANCY IN COMMON

“Tenancy in common” in Colorado, is the default tenancy. Tenancy in common is a form of ownership in which each co-tenant owns a separate fractional share of undivided property. Upon the death of one of the tenants in common, there is no transfer of the property. When a tenant in common passes away, that tenant’s interest in the property becomes an asset in the deceased’s estate and may pass to heirs or devisees.

A tenancy in common is generally used when the co-tenants are not related, although this is not always the case. For instance, if the buyers are two unrelated investors, they may decide that they will take the property as tenants in common because they would like to have the option to freely convey their interest in the property to third parties.

JOINT TENANCY

“Joint tenancy” or “joint tenancy with the right of survivorship” as it is otherwise known, is a tenancy where each joint tenant owns an undivided whole of the joint property, rather than a fractional part of the property. In order to create an estate in joint tenancy with survivorship there must be specific language in the deed to demonstrate the intent to create a joint tenancy. For example, the intent may be manifested through simply stating in the conveyance deed, “as joint tenants”. This can also be accomplished by utilizing such phrases as, “in joint tenancy with the right of survivorship” or “as joint tenants with the right of survivorship”, or the abbreviation “JTWROS”.

Taking as joint tenants is usually done among family members, and also done as part of the family’s estate planning. The property will pass to the joint tenant(s) by law

with the death of one of the joint tenants and not subject the property to the probate procedure and the decedent’s estate.

RIGHT OF SURVIVORSHIP

Upon the death of a joint tenant, the surviving tenant(s) become, the sole owner(s) of the property. They take title to the property free from any liens which may have existed on the now extinguished interest of the deceased. This right of survivorship is the distinguishing characteristic for a joint tenancy, as opposed to a tenancy in common.

SEVERANCE OF JOINT TENANCY

The joint tenancy can be severed by a conveyance from one joint tenant to a third party. The remaining joint tenants become tenants in common with the third party. The severance of a joint tenancy extinguishes the right of survivorship that makes a joint tenancy unique and desirable.

Choosing which tenancy to take title to a property is a complicated and detailed decision for the purchasers. Brokers should be careful not to advise buyers on estate planning or other legal or tax matters. Depending on the tenancy chosen there can be legal and tax consequences that should be taken into consideration. This article is designed to give brokers a basic understanding of the difference between the two tenancies.

QUESTIONS?

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