

Legal Alert – November 2014 – Joint Ownership of Property

Introduction.

The joint ownership of a property or properties continues to be a more common means of wealth creation. Joint ownership in some other instances serve as a succession plan that reduces estate taxes, Attorney Fees, etc.

As it is common with humans, the joint ownership of a property, either by contract, gift or by inheritance can lead to disputes and litigation between the surviving owner or owners and the deceased owner's heirs, especially if the joint ownership instrument is not carefully drafted.

Joint Tenancy.

Joint Tenancy is the right to the ownership of a property, by more than one person, such that on the death of any of the joint owners, the deceased owner's portion of the property passes to the surviving owner or owners of the property. The deceased owner's estate and heirs under a joint ownership structure will receive absolutely nothing.

Also, subject to whether words of severance or separation are used in the title instrument under which the property is held, an owner to a jointly held property cannot alienate his or her interest in such a property without the express consent of the other co-owner(s) to the property.

Joint Owners and Tenants-in-Common.

The opposite to the above described joint tenancy scenario is the principle known as **Tenants-in-Common** which arises where the property's instrument of title have words of severance or separation or distribution of the subject jointly held property. Where words of severance or separation are used, the words of severance or separation entitles the heirs or estate of a deceased owner to assume ownership of the deceased share of the property, with the surviving owner or owners of the property.

Conclusion.

Ensuring that the title document under which a property that is jointly owned is carefully drafted to achieve the estate plan of the owners of the property is strongly recommended. Where the joint owner or owners do not want their heirs to inherit any portion of the property on their demise, then no words of severance or separation should be used when drafting the instrument of

ownership. Where the intention is for the heirs to inherit, then words of severance, separation or distribution should be used when drafting the instrument of ownership.

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