

## **JOINT TENANCY OR TENANCY IN COMMON**

Whenever you buy a piece of real estate, one of the first and most important decisions you have to make is how you wish to hold the title. In other words, you have to decide whose name is going on the title.

The two most common forms of ownership are joint tenancy and tenancy in common. Actually, the names are a bit confusing because you aren't really tenants in the usual sense of the word. You certainly won't have a landlord and you won't have to pay rent on your house. You will be owners. However, these terms have a lot of history behind them and it would probably only confuse things worse to try to change them now.

Joint tenants, as the name implies, own property jointly. It operates in real estate much the same way as in the joint ownership of a bank account or joint ownership of any kind of asset, for that matter. The operative principle in joint ownership is that of a contingent interest (some event, in this case the death of all of the other joint tenants, has to occur for the interest to be complete) that is subject to the principle of *jus accrescendi* or "the right of survivorship".

This means that complete ownership goes to the last one left alive. Alternatively said, unless you are the survivor of all of the joint tenants (there can be more than two) your rights in the property are extinguished upon death. Because the right of ownership for joint tenants (for all but the survivor) is lost on death there is nothing to go into the estate. Similarly, because the ownership expires with the owner, there is nothing to attract estate taxes, deemed dispositions (income taxes) or probate fees. This reason alone is why most married owners hold their property jointly.

The other major type of ownership of property is tenancy in common. Each owner holds an undivided fractional interest. For example, if two people contribute equally to the purchase they will each usually take "an undivided one-half interest". For four equal contributors it would be "an undivided one quarter interest". And so on.

It is even possible to jointly own a fractional interest as, for example, when two couples go

together to buy a property each couple could take their half as "joint tenants to an undivided one-half interest." In that case, if one spouse dies the survivor owns the half interest outright.

There are a number of interesting (for lawyers, anyways) side issues. For example, how does one go about getting out of the relationship? Can just one owner sell or mortgage the property? How do you get the other person(s) on title to sell if they don't want to? How do you sever a joint tenancy? What is the effect of a divorce? These questions, however, will have to wait for another article.