

Part 1 Of 4: Who Owns Your Home?

Lilian Cazacu March 24, 2015



Part 1 of a 4 part series on the importance of Joint Tenancy in the Estate Planning & Real Estate matters – “Who owns your home?”

(Newswire.net -- March 24, 2015) Langley, BC -- Joint Tenancy and other types of Property Ownership

(Joint Tenancy, Tenancy in Common and Tenancy in Entirety)

When clients come to me to discuss estate planning or when they buy a property together with their spouse or other person, one of my first questions to them is what type of co-ownership is registered on the title. Often, I am met with a blank stare and one of them will speak up and say, 'well, we both *own* the property!' So when I explain there are three types of property ownership, they are quite surprised.

Property ownership falls under three different forms of co-ownership and each form has its own specific features. Each type performs a particular function but sometimes a client, without knowing what's best suited to their lifestyle and individual needs, may pick the wrong solution. This is where I come in. Further along in this series I will discuss some examples of how each type of co-ownership works and describe how it may apply to your own unique situation.

JOINT TENANCY is the most common form of property ownership and it has four specific features (also called “unities”).

1. **Unity of Interest** - a requirement that all joint-tenants must have the same interest (in duration, extent, and nature). So, each share is equal to the other(s) and their nature should be the same (fee simple, life estate, etc.)
2. **Unity of Time** – the joint tenancy interests must be acquired at the same time and for the same period.
3. **Unity of Title** – the interests a joint tenancy held by all the co-owners must arise out of the same document or instrument.
4. **Unity of possession** – each joint tenant (simultaneously with other joint tenants) must have an undivided share of the property and the same right to possess the entire property. So, no joint tenant shall have an exclusive possession of the entire property.

If any of these four unities are broken, the ownership becomes a Tenancy in Common. While this is very rare for a husband and wife, it can arise in the case of a brother and sister whom hold a **property inherited** from their parents.

Ultimately, the most distinguishing feature of Joint Tenancy is the **'Right of Survivorship'**, which implies that upon the death of a Joint tenant his or her rights are transferred directly to the surviving joint tenant without forming part of the estate. As a result, no Probate Fees need to be paid (but I'll talk about this more extensively in another article).

A **TENANCY IN COMMON** is created by a Deed, not a Will, and each tenant may not have equal shares. It could be a 60/40 split or 25/75, or any other combination to 100% of the property. A tenant in common is free to sell their share at any time and there are no restrictions upon this sale under the Tenancy in Common. However, unlike Joint Tenancy, there is no right of survivorship and the property goes to each tenant's heirs, which triggers the Probate fees.

Lastly, **TENANCY IN ENTIRETY** is the least common method of co-ownership and is no longer available in most jurisdictions. It is a form of property ownership available **only to a husband and wife**. It is created by a deed and can also be created when the couple makes their will. As a form of Joint Tenancy, it creates a right of survivorship and it allows the property to pass automatically to the surviving spouse. The benefit contained in this form of Tenancy is that it protects the surviving spouse from the other spouse's creditors.

How Tenancy in Entirety differs from the other forms of property ownership is that neither party can voluntarily dispose of their interest in the property.

In a **divorce** situation, should the divorcing spouse sell their interest to a third party, the Tenancy in Entirety is dissolved and the property title becomes instead a Tenancy in Common. The right of survivorship is revoked and lost to each spouse. In that case, a new will would need to be drawn up so the heirs of the divorcing couple are able to inherit their portion of the estate.

As you can see, property ownership is not always straightforward. This is why it is a good idea to seek professional help from a Notary Public. Whether you are acquiring new property, drafting a new will, or wanting to do some estate or personal planning, a Notary Public can help you create a scenario of ownership which works best for you and your family and ultimately save you taxes and future headaches.

About LC Notary Corporation

Lilian Cazacu is a Notary Public based in the city of Langley, BC, Canada. He provides Notary services in Langley, Surrey, Aldergrove, Cloverdale and White Rock. Lilian has Masters Degrees in Applied Legal Studies and Civil Law, a Bachelor Degree in Law and Doctoral Studies. His diverse experience together with his extensive legal education lead him to provide workable solutions to various complex notarial matters for his clients.

LC Notary Corporation

20385 64th Avenue

Langley, BC V2Y 1N5

Canada

604-375-2679

Lilian@LCnotary.ca

Source: <http://newswire.net/newsroom/pr/00087978-part-one-of-four-who-owns-your-home-using-a-notary-public.html>