

O'DONNELL LEE MARDEN DUBORD, P.A.

ATTORNEYS AT LAW

325-E Kennedy Memorial Drive
Unit 1
Waterville, ME 04901

www.watervillelaw.com

Tel. (207) 872-0112
Fax (207) 872-0002

Joint Tenancy or Tenancy In Common?

How to Hold Title

by Thomas B. McCowan, Esq.

In Maine, there are two ways for multiple persons to hold title to property: Joint Tenancy (with right of survivorship) and Tenancy In Common.

Joint Tenancy: Co-owners holding title this way are called "joint tenants." The unique characteristic of joint tenancy is the right of survivorship. When an owner dies, their interest in the property is extinguished. The remaining owners continue in ownership of the property free of the interest of the deceased party. The deceased owner's interest does not pass to heirs, does not become part of their estate, is not controlled by their Will, and does not have to be deeded to the surviving owners.

Most of the time, this is the form of ownership selected by married couples, since it provides for the surviving spouse to continue in complete ownership of the property without the delay and expense of court action. However, more than two parties can own in joint tenancy, and it is not limited to married persons.

In order for title to be held as joint tenants, the deed must explicitly state that the property is conveyed to the grantees "as Joint Tenants." If the deed does not specify, title is taken as tenants in common instead. If parties hold title as tenants in common and want to convert to joint tenancy, they must execute and record a deed from themselves to themselves as joint tenants.

Tenancy In Common: In this form of ownership, upon the death of an owner, their ownership interest is held by their estate. Who inherits the decedent's share of the property is controlled by the decedent's Will. If they do not have a Will, it passes under the laws of intestate succession - statutes that specify who inherits the property of a dead person. For the title to the property to be transferred, a deed from the Personal Representative of the decedent is necessary. This requires the filing of a probate case to have a Personal Representative appointed.

This form of ownership is often selected by couples with children from prior relationships, siblings, and others who want to ensure that their heirs will inherit an interest in the property upon the owner's death.

While the right of survivorship is usually the key factor in decisions about how to hold title, tax planning, estate planning, and other issues may need to be considered. Parties having any doubts or questions about how to hold title should consult their lawyer and/or accountant for advice on their particular situation.

If you have further questions about this topic, be sure to speak to your lawyer. If we are working with you, please give us a call at (207) 872-0112.

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