

Two Types of Co-Ownership in Real Estate: Which Is Best for You?

There are two main types of co-ownership in land.

1. Joint Tenants

One type of ownership is referred to as a joint tenancy. Where two or more persons hold a piece of land as joint tenants, there is an automatic right of survivorship built into the deed or transfer. In other words, if one of the joint tenants dies, the other automatically owns the whole property. This type of ownership is not subject to probate fees because the land passes through the deed to the surviving joint tenant(s). It does not pass through the Will or estate of the deceased owner. This is the most common type of ownership in land between spouses where the intention is to have the whole property pass to the surviving spouse on death.

If either of the spouses change their mind and no longer wish their spouse to automatically own the whole property should they die, then the joint tenancy can be severed by consulting a lawyer who will draft and register the necessary deed or transfer to convert the property into a tenancy in common, which is the second type of co-ownership in land.

2. Tenants in Common

When two or more owners hold land as tenants in common, they each have an undivided interest in the land and the land passes through their estate or Will to their beneficiaries. Therefore, on death, probate fees are payable on the value of the deceased person's portion of the land. The probate fees are \$5.00 on every \$1,000.00 up to \$50,000.00 for a total of \$250.00 in probate fees on the first \$50,000.00 in the estate. After the first \$50,000.00, the probate fees increase to \$15.00 on every \$1,000.00.

In cases where spouses decide to hold the land as tenants in common due to the fact that they prefer to leave their half of the property to their children, for example, they should consider leaving the surviving spouse a life tenancy in their half of the property to prevent the surviving spouse from having to sell the property and move or, in the alternative, purchase half the property from the children. Please consult your lawyer concerning the pros and cons of establishing a life tenancy. This can be done either through the deed to the property or through a Will, or both.

If you are contemplating cohabitation or marriage, please consult your lawyer regarding a cohabitation agreement or marriage contract, to protect any real estate that you own prior to cohabitation or marriage.