

# The 3 Types of Real Estate Co-ownership in Maryland: What Every Owner Should Know

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Do you co-own, or are you planning to co-own, real estate in Maryland? Perhaps you are married or planning to marry, you are acquiring property with others, or you have inherited a property along with others. There are many decisions to make when considering real estate co-ownership, one of which is the type of co-ownership you should enter into, referred to legally as your estate in the property. In fact, as circumstances change, you may benefit by changing your type of co-ownership. However valid your reason for sharing ownership in a given property may be, you should clearly understand the type of co-ownership you have, because it matters a great deal more than you may realize.

Consider these three important questions:

- Can you convey your share of the property by gift or sale, or devise it in a will, without consent of your co-owners?
- Is your property vulnerable to a creditor who may be actively seeking to collect on a personal debt you owe, or on the debt of a co-owner?
- What happens to your property interest in the event of a divorce or death?

There are **three types of real estate co-ownership in Maryland: Joint Tenancy, Tenancy by the Entirety** (a.k.a. Tenancy by the Entireties) for married couples and **Tenancy in Common**.

1. **JOINT TENANCY** is when two or more co-owners simultaneously have an interest in the whole property, as well as a separate, undivided individual interest. Each Joint Tenant enjoys a shared right of possession to the whole property, while holding title to a portion of it. Joint Tenancy requires that the Joint Tenants acquire their interests at the same time, by the same instrument (e.g. deed or will) and in equal interests. The hallmark of Joint Tenancy is a right of survivorship. When one Joint Tenant dies, by operation of law the decedent's interest is automatically transferred proportionally amongst the surviving Joint Tenants. The intent to form a Joint Tenancy must be clearly expressed in the instrument. If the instrument does not contain the words "Joint Tenants" or "Joint Tenancy," it must otherwise clearly intend a right of survivorship.

**Pros & Cons of Joint Tenancy:** In one sense a right of survivorship is an advantage, because there is no need to record a deed verifying that the survivor(s) now owns the decedent's interest. However, this also means that a Joint Tenant cannot devise her property interest to her heirs. Joint Tenants are only responsible for their respective share of cost of maintaining the property, such as property taxes, mortgage and insurance. Moreover, Joint Tenants are entitled to share proportionally in any income the property earns. Also, if a Joint Tenant incurs a debt unrelated to the property, any resulting judgment lien is only against her apportioned interest in the property. However, if a judgment

creditor successfully levies the property within the debtor Joint Tenant's lifetime, the other Joint Tenants may suffer the consequences of either a forced sale or partitioning (physical division) of the property. A Joint Tenant retains the right to sell or gift his/her interest in the property without permission of the other Joint Tenants, but in doing so, the Joint Tenancy is severed, creating a Tenancy in Common with the remaining Joint Tenants. In Maryland, a Joint Tenant's mortgage of his/her property interest also converts his/her co-ownership into a Tenancy in Common. Finally, an individual Joint Tenant may file a lawsuit to potentially force a partition of the property, or a sale in lieu of partition, in which case the proceeds are distributed amongst the Joint Tenants.

2. **TENANCY BY THE ENTIRETY** is a form of Joint Tenancy recognized under common law for married couples. In Maryland, couples who are married when executing the deed to a property are presumed to take title as Tenants by the Entirety unless otherwise provided in the instrument. However, if two persons marry while already owning property together as Joint Tenants, their ownership is not automatically converted into a Tenancy by the Entirety. They must update their deed. Conversely, when the Court grants an absolute divorce, the Tenancy by the Entirety is severed by operation of law and their co-ownership is converted into a Tenancy in Common, thus extinguishing the right of survivorship.

**Pros & Cons of Tenancy by the Entirety:** Under a Tenancy by the Entirety there is only one shared interest between the married co-owners, consequently one spouse cannot sell or otherwise convey the property without the consent of the other. Also, if only one spouse owes a debt to a creditor, that creditor cannot force a sale to satisfy the debt; the property is shielded from the debts of one spouse.

3. **TENANCY IN COMMON** differs from Joint Tenancy in that each co-owner has a divisible interest in the property, and there is no right of survivorship. When a Tenancy in Common is formed, the property interests will be apportioned equally between the Tenants in Common, unless allocation is otherwise specified. Any property granted to two or more unmarried persons is a Tenancy in Common unless there is a clear intention in the instrument to form a Joint Tenancy.

**Pros & Cons of Tenancy in Common:** A Tenant in Common may convey, encumber and devise his/her property interest as he/she wishes without the consent of the other co-owners. However, a Tenant in Common's interest in the property is susceptible to liens and judgments.

As a co-owner in any arrangement, you should understand the ramifications of your type of co-ownership. This is particularly true when facing litigation. It is important to consult a professional to review your deed, and discuss how your property interest may be impacted if you are facing litigation or other situation.

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