

JOINT TENANCY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies real estate provisions to address joint tenancies.

Highlighted Provisions:

This bill:

- ▶ addresses when a joint tenancy is presumed;
- ▶ clarifies that a joint tenancy may not be established between a person and limited liability company; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-5, as last amended by Laws of Utah 2011, Chapter 88

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **57-1-5** is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.



28 (1) (a) (i) [~~Beginning on May 5, 1997, every~~] Every ownership interest in real estate
29 granted to two persons in their own right who are designated as husband and wife ~~H~~→ [~~wife and~~
30 ~~husband, married, or a married couple~~] ←~~H~~ in the granting documents is presumed to be a joint
31 tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in
32 the grant to be otherwise.

33 (ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established
34 between two or more people.

35 (iii) Joint tenancy may not be established between a person and an entity or
36 organization, including:

37 (A) a corporation;

38 (B) a trustee of a trust; [~~or~~]

39 (C) a partnership[~~;~~]; or

40 (D) a limited liability company.

41 (iv) Joint tenancy may not be established between an entity or organization and another
42 entity or organization.

43 (b) Every ownership interest in real estate that does not qualify for the joint tenancy
44 presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest
45 unless expressly declared in the grant to be otherwise.

46 (2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the
47 survivor of them" or words of similar import means a joint tenancy.

48 (b) (i) Use of words "tenancy in common" or "with no rights of survivorship" or
49 "undivided interest" or words of similar import declare a tenancy in common.

50 (ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in
51 common unless accompanied by joint tenancy language described in Subsection (2)(a), which
52 creates a joint tenancy.

53 (3) A person who owns real property creates a joint tenancy in himself or herself and
54 another or others:

55 (a) by making a transfer to himself or herself and another or others as joint tenants by
56 use of the words as provided in Subsection (2)(a); or

57 (b) by conveying to another person or persons an interest in land in which an interest is
58 retained by the grantor and by declaring the creation of a joint tenancy by use of the words as

59 provided in Subsection (2)(a).

60 (4) In all cases, the interest of joint tenants shall be equal and undivided.

61 (5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide
62 conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or
63 another, the joint tenancy is severed and converted into a tenancy in common.

64 (b) If there is more than one joint tenant remaining after a joint tenant severs a joint
65 tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in
66 joint tenancy.

67 (6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no
68 retrospective operation and shall govern instruments executed and recorded on or after May 5,
69 1997.

70 (7) Tenants by the entirety are considered to be joint tenants.

71 (8) Tenants holding title as community property are considered to be joint tenants.

Legislative Review Note
Office of Legislative Research and General Counsel