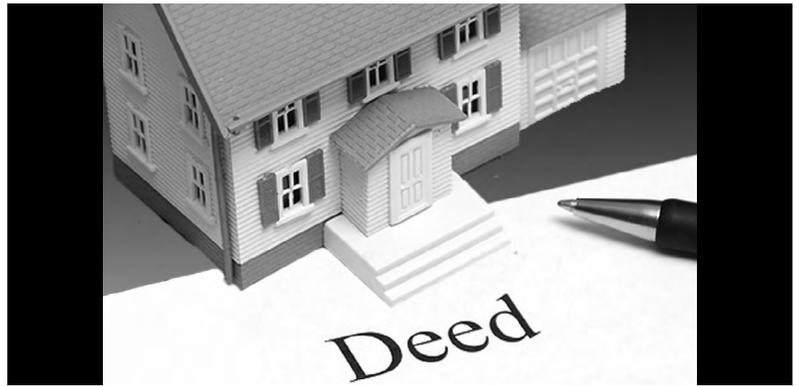


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Volunteer Lawyers Project  
Nebraska State Bar Association

# Joint Tenancy

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## Joint Tenancy and Other Survivorships

Many people own property in “joint tenancy” with another person or persons—usually their spouse, a relative, or in some cases, a business associate. It can be a convenient method of ownership and usually allows for the easy transfer of property upon death of one of the joint tenants. However, holding property in joint tenancy does not necessarily eliminate the need for court proceedings when one joint tenant dies; and, it is not a substitute for a will.

### What is a joint tenancy?

Joint tenancy is a way in which two or more persons may hold title to property in equal, undivided shares. When one owner dies, his or her share of the property is not passed on according to a will, but automatically becomes the property of the surviving joint tenant(s). The last survivor becomes the sole owner of the property and can dispose of it as he or she wishes.

Example: Three brothers (“Tom”, “Dick”, and “Harry”) own land in joint tenancy. Tom dies, and his share passes equally to Dick and Harry, not to Tom’s wife, children or other heirs. When Dick dies, Harry owns the land entirely. He may sell it, leave it to his children or other persons of his choice, give it to charity, or do as he wishes with it. The heirs of Tom and Dick would have no claim to the land. This example assumes after Tom’s death, Dick and Harry continue their joint tenancy relationship. However, they would also have the option of severing the joint tenancy and establishing another method of ownership, which could enable each brother to leave his share to his heirs.

### What forms of property can be held in joint tenancy?

Practically any kind of property can be held in some form of “survivorship” (so called because it establishes the survivor as the owner of the property). The most common forms are real estate, motor vehicles and securities, which are held in joint tenancy, and checking or savings accounts or government bonds, which are registered in co-ownership. While it is possible for tangible property such as grain or inventories to be owned in survivorship, such ownership can be difficult to prove if there is no evidence of a title, such as a deed or a bill of sale.

### How should the names be written on legal documents?

On legal documents establishing a joint tenancy, the names of the owners should be connected with the word “and.” The names should be followed with the words “as joint tenants and not as tenants in common.” For example, a husband and wife might own a home for which the title reads, “John Doe and Jane Doe, as joint tenants and not as tenants in common.” If you have jointly owned property for which the title or record of ownership is worded differently, it may still be legally acceptable, but you may want to review it with your lawyer.

## Are all Survivorships written this way?

Not necessarily. For example, Nebraska law provides a uniform form that permits depositors to establish the ownership of their bank accounts and designate rights at death, which can provide a “right of survivorship” for a co-owner on a multiple-party account. An account with a right of survivorship passes to the survivor upon death of the deceased co-owner. Therefore, there are forms of property ownership using rights of survivorship that may not be true joint tenancies, but if they are properly created, they enable the last survivor to own all of the property.

### What is “tenancy in common”?

When two or more people own property as “tenants in common,” each is the sole owner of his or her share. Upon one owner’s death, the property is a part of his or her estate and can be passed on by will or under state law if there is no will. For example, a man and his son may own land as tenants in common. If the father should die, he could leave his half of the land to his widow, another child, the son who owns the other half or any other person.

Tenancy in common does not establish a survivorship interest like joint tenancy.

### What rights does each joint tenant have with regard to jointly owned property? Could one joint tenant dispose of the property without the knowledge or consent of the other?

Each joint tenant has full access to jointly owned bank accounts held in joint tenancy, and could withdraw all funds from the account without the knowledge or authorization of the other, although amounts on deposit generally belong to the parties in proportion to the net contribution of each for unmarried co-owners.

With real estate, however, one joint tenant would have the right to sell his or her interest in jointly owned property, but could not provide the buyer with good title to the entire property. Such a sale, without the joinder (legal agreement) of the other joint tenant(s), might be impractical to consider for several reasons. Such a sale would have the effect of severing the joint tenancy and converting it to a tenancy in common with the remaining joint tenant(s), which could give rise to disputes concerning their respective rights and obligations.

### What is a “P.O.D. Account”?

A P.O.D. (payable on death) account is the property of, and payable to, one person during his or her lifetime, and to one or more P.O.D. payees upon that person’s death. Or, it may be payable to more than one person during their lifetimes and then payable to one or more payees upon the death of all the owners.

Example: James wants to provide cash support to his nephew, Charles, after his death but doesn't want Charles to have access to any of his funds while he (James) is still alive. He establishes a P.O.D. account naming Charles as the payee. During James' lifetime, he has complete access to the money and upon his death, the account is payable on request to Charles.

### **Can a survivorship interest pass by will?**

No. Property is owned so the last survivor owns it upon the death of the other owner(s). The most carefully prepared will or estate plan cannot affect that right of ownership. Only the last survivor may dispose of the property by will.

### **Is joint tenancy a substitute for a will?**

No. A will provides only for the disposing of property which is owned by an individual. While a survivorship or joint tenancy arrangement can ensure a certain person or persons become the owner(s) of property upon your death, a will is necessary to dispose of individually owned property and personal possessions. A will also allows you to name a personal representative to handle your estate, to suggest a guardian for your minor children and to make specific bequests to friend, family or charity. Another consideration is that no one knows who will be the last survivor, or whether he or she will make a will after becoming the last survivor. Therefore, it is prudent to have a will, to ensure your property is passed on how you wish.

Example: "John" and "Mary" are a married couple, with two children. They own their home, a checking account, savings account, a few stocks, bank CD's, and their two cars, all in joint tenancy. They decide they do not need to make wills, because each feels the surviving spouse should receive everything upon the death of the first spouse. John and Mary are involved in a car accident in which Mary is killed; John is seriously injured and dies several weeks later, without having regained his health and mental capacity. Without a will to govern the distribution of his property, John's estate is distributed according to state law. He and Mary have not designated a guardian to care for their children, or indicated who they wish to handle their estate. The court must appoint someone without knowing their wishes. While one of the children is capable of handling his future inheritance, the other is a spendthrift whose share should be placed in trust with provisions for when and how the funds become available. However, no such agreement was drawn up.

No provisions were made for the distribution of several of Mary's family heirlooms, one of which she always wanted to give to her younger sister. John intended to provide a small bequest for a long-time employee of his business, but did not do so. John and Mary could have arranged for their property to be distributed in the way they wanted by having wills drawn. Each could have provided for the eventual distribution of all jointly owned property, depending upon who was the last survivor. Each will could have also provided for the distribution of individually owned property, such as Mary's family heirlooms. John and Mary mistakenly believed they had planned by placing their property in joint tenancy. They could not have foreseen the events, but they could have planned for them.

### **Does survivorship avoid court proceedings?**

Not entirely. Property held in a survivorship which meets the tests of Nebraska law does not need to undergo regular probate in Nebraska. However, such ownership does not always avoid court proceedings. Although the property belongs to the survivor(s), it may still be subject to state inheritance and estate taxes and federal estate tax. State inheritance tax is determined by a special proceeding in the county court.

Property owned in joint tenancy by a person and his or her spouse (and no other party) passes to the surviving spouse without an inheritance tax determination.

Finally, depending on the timing, the consideration provided by a new joint tenant to receive his or her interest, and the relationship of the parties, the creation of a joint tenancy may impact Medicaid eligibility or recovery if the original owner(s) applies for Medicaid or dies after receiving Medicaid assistance.

### **What if the estate is unable to pay the taxes and debts?**

In an insolvent estate, where the assets are not sufficient to pay due debts, taxes, expenses, or allowances, jointly owned property owned by the deceased may be subject to these items.

### **How does a court determine what taxes are due?**

A tax determination is based upon the assets of the estate, certain exemptions which are available, the relationships between the deceased and the heirs and other factors. In terms of jointly owned property, the tax determination is based upon each owner's contribution to the acquisition of the property.

Example: "Margaret" purchases a \$10,000 CD in her name and her granddaughter "Susan's" name. Margaret contributes the full purchase price. When she dies, the CD is payable to Susan, but its value is included in the estate for tax purposes. If Susan dies first, Margaret has no tax liability on the CD since she could show she made the full \$10,000 contribution.

Tax laws are complex, and their various benefits and obligations, particularly for property held by husband and wife, cannot be covered in a general pamphlet. It is important to know, however, that joint tenancy is not always the most beneficial and economical way to own property and that other estate planning devices may better meet your needs both now and in the future.

### **What should be done about existing survivorships?**

Whether to continue to hold property presently owned in some form of survivorship, or to acquire additional property in that form of ownership, requires careful review based on your individual circumstances. Changes in tax laws, property law and property values, as well as many other factors, affect such decisions.

Joint tenancy and other survivorship interests involve serious consequences. You and your lawyer should review any existing survivorship arrangements regularly, and consider carefully any such future arrangements. Remember, joint tenancy is not a substitute for a carefully prepared estate plan.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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