

Real Estate and You

Deeds with two or more owners: Who owns the land when one person dies?

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Most property titled in the names of two owners passes to the surviving owner at the death of the other. However, this is not true in all cases. It depends on the relationship of the parties and exactly how the asset is titled.

For *married couples*, real estate held in the joint names of spouses passes to the survivor. This type of ownership is called a *tenancy by the entirety*, rather than the standard joint tenancy with rights of survivorship. When the husband or wife dies, the surviving spouse automatically becomes the sole owner of the property. Neither spouse may sell the property unless the other consents to the sale.

Outside the marital relation, the language of the deed is important. If title to the property is taken in the names of "A and B, joint tenants" or "A and B, joint tenants with rights of survivorship," the property passes to the survivor of A and B at the first death.

The difference between these two forms of joint ownership is that if title is taken “with rights of survivorship,” neither A nor B can unilaterally destroy the contingent remainder interest of the other. However, either cotenant may transfer their lifetime interest to someone else, and the jointly owned property may also be partitioned (split in two by a court).

People who are not married who take title to property under a deed that does not expressly create a joint tenancy receive an *estate in common* that does not pass to the survivor—each owner has an undivided one-half interest in the property.

When one tenant in common dies, title does not automatically pass to the surviving tenant(s) in common. Instead, his interest passes to his heirs or devisees.

Real estate matters and issues involving deeds and land ownership can be complex and confusing. If you have questions about any real estate matter, be sure to contact us.

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