

§ 41-73. Termination of a joint tenancy with right of survivorship.

(a) Events terminating a joint tenancy with right of survivorship due to the collective action of all joint tenants include the following:

- (1) The conveyance to a third party by all of the joint tenants of all of their interests in the property held in the joint tenancy, including a foreclosure sale pursuant to a power of sale in a deed of trust.
- (2) The execution of an instrument with a third party by all of the joint tenants that does not convey all of their interests in the property held in the joint tenancy to the third party, including a lease, executory contract of sale, option to purchase, or deed of trust, and an intention to terminate expressly appears in the instrument.
- (3) The execution of an instrument by all joint tenants for the purpose of expressing an intent to terminate the joint tenancy as between or among themselves.

(b) Events terminating a joint tenancy with right of survivorship due to the unilateral action of a joint tenant include the following:

- (1) The conveyance to a third party by a joint tenant of all of that joint tenant's interest in the property held in the joint tenancy, including a foreclosure sale pursuant to a power sale in a deed of trust.
- (2) The execution of an instrument with a third party by a joint tenant that does not convey all of that joint tenant's interest to the third party, including a lease, executory contract of sale, option to purchase, or deed of trust, and an intention to terminate expressly appears in the instrument.
- (3) The execution of an instrument by a joint tenant where the joint tenant is both the grantor and the grantee if the intention to terminate expressly appears in the instrument. A termination under this subdivision shall be effective only upon the recording, prior to the death of the joint tenant, of an instrument expressing an intent to terminate in the office of the register of deeds in the county or counties where the real property is situated.
- (4) The filing by a joint tenant of a petition to partition.

(c) When a termination occurs, a tenancy in common is created as follows:

- (1) If a termination occurs under subdivision (1) of subsection (a) of this section because of the conveyance of all of the joint tenants' interests to a third party, a tenancy in common is created among the tenants as to any proceeds of sale or surplus funds generated from a foreclosure sale.
- (2) If a termination occurs because of the execution by all of the joint tenants of an instrument described in subdivision (2) or (3) of subsection (a) of this section, a tenancy in common is created among the tenants.
- (3) If a termination occurs under subdivision (a) of subsection (b) of this section because one of the joint tenants conveys all of that joint tenant's interest to a third party and there are only two joint tenants, a tenancy in common is created between the third party and the other joint tenant. If there are more than two joint tenants and one of the joint tenants conveys all of that joint tenant's interests to a third party, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between or among themselves.
- (4) If a termination occurs because of the execution by a joint tenant of an instrument described in subdivision (2) or (3) of subsection (b) of this section or because of the filing of a petition by a joint tenant as provided in subdivision (4) of subsection (b) of this section, and there are two joint tenants, a tenancy

in common is created between the joint tenant causing the termination and the other joint tenant. If there are more than two joint tenants, a tenancy in common is created among the joint tenant causing the termination and the remaining joint tenants who continue as joint tenants with right of survivorship as between or among themselves.

(d) The following events do not result in a termination of joint tenancy with right of survivorship:

- (1) The filing of a judgment against one joint tenant.
- (2) The filing of a bankruptcy petition by one joint tenant.
- (3) When married individuals holding an interest as tenants by the entirety in a joint tenancy with one or more other joint tenants divorce. Unless the divorced individuals agree otherwise, the divorced individuals shall be deemed to hold their existing interest equally as tenants in common as to each other, but as joint tenants with right of survivorship as to remaining joint tenancy holders.

(e) Nothing in this section shall limit the manner or effect of a termination ordered by a court of competent jurisdiction. (1784, c. 204, s. 6; R.C., c. 43, s. 2; Code, s. 1326; Rev., s. 1579; C.S., s. 1735; 1945, c. 635; 1989 (Reg. Sess., 1990), c. 891, s. 1; 1991, c. 606, s. 1; 2009-268, s. 1; 2010-96, s. 9; 2012-69, s. 2; 2013-204, s. 1.11; 2020-50, s. 2(a)-(c).)