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MontGuide

How to Transfer Real Property Owned in a Joint Tenancy or in a Life Estate Without Probate

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When real property is owned as joint tenants or is subject to a life estate, the distribution method is determined by Montana Law. This process is described in this MontGuide.

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WHEN A PERSON DIES WITHOUT A VALID WRITTEN will, Montana law provides for the distribution of his or her real property (including a house or a parcel of land) and personal property (including savings and checking accounts, certificates of deposit) to legal heirs. The original intestacy statutes (meaning dying without a will) have been substantially revised to recognize the increasing portion of Montanans who have been married more than once and have stepchildren and children by previous marriages. Under certain conditions, Montana law also provides for the deceased person's parents to receive some property.

The property of a Montana resident who dies without a valid written will passes to his or her heirs by the priority listing in the intestacy statutes outlined in Table 1 of the MSU Extension MontGuide, *Dying without a Will in Montana: Who Receives Your Property* (MT198908HR).

However, when real property is owned as a joint tenant or is subject to a life estate, the distribution method is determined by other provisions of Montana law.

- If the deceased person owned an interest in real property in joint tenancy with others, that ownership interest automatically ceases upon his or her death and passes to the surviving joint tenant or joint tenants.
- If the deceased person was a life tenant (meaning holding real property in a life estate), the life estate automatically terminates upon the death of the life tenant and the property passes to the remainderman. Remainderman is a legal term for someone who is entitled to receive property at the death of the life tenant.

Probate is not required to transfer a deceased person's real property held in a joint tenancy or in a life estate. Although the real property transfers automatically, there is a legal procedure provided by the Montana legislature to update the public record to show the new ownership. This update needs to be recorded with the clerk and recorder in the county where the property is located.

If a surviving joint tenant or remainderman of a life estate decides to sell the real property, the removal of the deceased person's name clears the title so the property may be sold.

Real property owned as joint tenants with right of survivorship

Joint tenancy with right of survivorship is a form of co-ownership in which two or more persons own the same property. A joint tenancy in real property can be held between married couples, siblings, parents and children, or persons who are not related.

The typical wording used to create a joint tenancy in real property is "John Jones and Mary Jones as joint tenants with right of survivorship and not as tenants in common." The word "or" between the owners' names is not typically used on a title or deed for real property.

If the deed or title is worded as "John Jones and Mary Jones," with no mention of a joint tenancy, Montana law defines the ownership of the real property as tenants in common. This method of co-ownership is described in the section "Real property titled as tenants in common" on page 2.

When real property is owned in joint tenancy with right of survivorship, the property passes automatically to the surviving joint tenant or tenants upon death of one of the joint tenants. Even if the deceased person had written a will naming someone other than the surviving joint tenant to receive the real property, the real property automatically transfers by Montana law to the surviving joint tenant.

Example A: Donna and Jim owned their house and two acres of land as "Donna Chambers and Jim Chambers as joint tenants with right of survivorship." Later Jim wrote a will leaving that same property to his son from a prior marriage. Jim's son did not receive the house or the two acres of land. Donna automatically became the owner because the house and land were held in joint tenancy with right of survivorship between Donna and Jim.

Transferring real property owned as joint tenants with right of survivorship to surviving joint tenant.

Although property held as joint tenants with right of survivorship passes automatically to the surviving joint tenant or tenants without passing through the district court probate process, the Montana legislature has provided a way for the public records to reflect such a transfer. The surviving joint tenant or tenants can file a document with the clerk and recorder in the county where the real property is located. The surviving joint tenant provides the following information in the document:

1. A statement that one holder of the joint tenancy interest is deceased, the date of death, and that the deceased holder's interest in the property is terminated; and,
2. A legal description of the real property held by the deceased person and surviving joint tenant or tenants.

An example document, Acknowledged Statement of Termination of Joint Tenancy is available at the Senior and Long Term Care Division, Department of Public Health and Human Services website, <http://dphhs.mt.gov/SLTC/aging/legalservicesdeveloper/legal-forms>.

The Acknowledged Statement must be signed and acknowledged before a notary public before it will be accepted by the clerk and recorder in the county where the property is located. The recording fee for the Acknowledged Statement is \$7 per page if it meets the legislative "standard" format. The form at the Senior and Long Term Care Division website meets the legislative "standard."

The surviving joint owner must also present a completed Montana Realty Transfer Certificate (Form 488) to the clerk and recorder. This confidential tax document is required by the Department of Revenue from any party transferring real property. The form is available at any Montana county clerk and recorder's office or online www.revenue.mt.gov, Search "Realty Transfer Certificate" or "Form 488."

After the Acknowledged Statement is recorded, title to the property appears in the name of the surviving joint tenant or tenants. Future real estate tax bills from the county treasurer's office will be sent to the surviving joint tenant or tenants who now hold title to the property.

Brief review of ownership in joint tenancy with right of survivorship.

The transfer of ownership to real property held as joint tenants with right of survivorship is often overlooked until the surviving joint tenant (very often the surviving spouse) or beneficiaries of the surviving joint tenant decide to sell it or encumber it (for example, use the real property as collateral for a loan). At that point they may be faced with the time consuming process of proving one or all joint tenants are deceased so the public records in the clerk and recorder's office can be updated. Closings can be delayed while beneficiaries submit proof of the death of the joint tenants.

The surviving joint tenant can submit a document, such as the Acknowledged Statement of Termination of a Joint Tenancy to make the process easier for him or her and future heirs (persons who are entitled under intestate succession statutes to the property of a person who died) or devisees (persons designated in a will to receive real or personal property).

Real property owned as tenants in common

Another way property can be owned between co-owners, including married couples, siblings, parents and children, or persons who are not related, is a tenancy in common. When property is owned as tenants in common each person owns an undivided interest in the same real property. After one of the co-owners dies, his or her share becomes part of his or her estate.

A tenancy in common in real property in Montana is typically created by using the word "and" between the names, for example, "John Jones and Mary Jones." Some owners make it absolutely clear by adding the phrase "as tenants in common," for example, "John Jones and Mary Jones as tenants in common."

When two or more persons co-own real property as tenants in common, there is no automatic right of survivorship for the surviving tenant in common to receive the deceased co-owner's share. The deceased person's interests must pass through the probate process or an intestacy proceeding to determine the legal heirs or devisees.

Transferring interest in real property owned as tenant in common.

The simplified method used to terminate a joint tenancy is not available for real property owned as tenants in common. The transfer process depends on whether the deceased tenant in common died with a written will or without a written will.

Written will. If the deceased co-owner had written a will leaving his or her real property titled as tenants in common to his or her devisees, the will must be declared valid by the district court during probate. After the will has been declared valid, the deceased person's tenant in common interest may be transferred to his or her designated devisee or devisees.

Example B: John and his wife, Mary, owned a section of land as tenants in common. Each owns an undivided interest of fifty percent. John died with a written will leaving his fifty percent interest in the land to their son, Matt. After John's will was declared valid during the probate process, the personal representative of John's estate executed a new deed and filed it with the clerk and recorder. The title is now held as tenants in common by Matt and Mary.

No written will. If a landowner who held real property as a tenant in common died without a written will, the legal heir or heirs are determined during a district court intestacy proceeding. MSU Extension has a website that can be used to discover who receives property under state law if a Montana resident passes away without a written will (as do 7 out of 10 Americans): www.montana.edu/dyingwithoutawill.

Example C: Tim and Lucy owned a vacation home on Flathead Lake as tenants in common. Together they had three children, all of whom are living. Because Tim died without a written will, the heir to his ownership of the property as a tenant in common is determined in an intestacy proceeding. Although Tim and Lucy have three children, the priority heir is Tim's wife, Lucy. After Lucy submitted a marriage license proving she was Tim's wife, the Administrator of Tim's estate recorded a new deed for the vacation home with the clerk transferring the property to Lucy.

Brief review of ownership as tenant in common.

When real property is owned by two or more persons as tenants in common, each co-owner has an undivided interest in the property. His or her interest can be left to others with a written will. If there is no will, the legal heirs of the undivided interest are determined during an intestacy proceeding in accordance with Montana intestacy statutes. The simplified method used to terminate a joint tenancy is not available for real property owned as tenants in common.

Real property subject to a life estate

A life estate in real property can be created in two ways:

1. By a direct grant (such as a deed or provisions in a will) of a life estate to a person by the owners of the real property, or
2. By reserving a life estate as part of the transfer of the real property.

A life estate is the right to the possession, use and income from a property for the duration of a person's life. The owner of a life estate is called a life tenant. When property is subject to a life estate, the life estate interest is terminated at death of the life tenant and the interest transfers to the remainderman without the necessity of a probate proceeding.

Example D: Jane had a house titled in her name only. In her will Jane left the house to her husband, Jack, for his life, and then at his death to Susan, her daughter from another marriage.

Jack is not the owner of the house; he is only the life tenant. Therefore, he cannot sell, gift or leave the house to someone else in his written will. As the life tenant he is responsible for paying property taxes, insurance premiums, and needed repairs on the house.

Susan is termed the remainderman because she receives the house upon the death of Jack. Susan becomes responsible for paying real estate taxes, insurance premiums, and needed repairs on the house.

If a life tenant writes a will naming someone other than the remainderman as devisee of the property, that provision in the will is disregarded. The property interest transfers by law from the life tenant to the remainderman without the necessity for a probate proceeding.

Example E: Rob has a life estate in ranch land left to him by his father. Rob's son, Doug, is the remainderman. Rob wrote a handwritten will leaving the land to his new wife. The will is ineffective for the life estate. Doug received the land upon the death of his father, not Rob's new wife.

Transferring real property that is subject to a life estate.

The Montana legislature has provided a way to update the public record ownership of real property on the death of a life tenant without probate. The remainderman can file a document indicating the life tenant is deceased and the identity of the remainderman. The following information is provided:

- a statement that the holder of the life estate interest has died, date of death, and that the life tenant's interest in the property is terminated; and
- a legal description of the real property held in a life estate.

An example document, Acknowledged Statement of Termination of Life Estate form is available at the Senior and Long Term Care Division, Department of Public Health and Human Services website, <http://dphhs.mt.gov/SLTC/aging/legalservicesdeveloper/legal-forms>.

Like the Acknowledged Statement for joint tenancy, the Termination of a Life Estate must be signed and acknowledged before a notary public before it will be accepted by the clerk and recorder in the county where the property is located. The remainderman must also present a completed Montana Realty Transfer Certificate (Form 488) to the clerk and recorder (see page 2). The form is available at any Montana county clerk and recorder's office or online www.revenue.mt.gov, Search "Realty Transfer Certificate" or "Form 488."

After the Acknowledged Statement is recorded, the public record is updated to reflect that the title to the property is now in the name of the remainderman. Future real estate tax bills will be sent by the county treasurer's office to the remainderman who now holds title to the property.

Brief review of a life estate.

A life estate allows one person to have possession of property (typically land, a home or buildings on the land) during his or her lifetime. After the death of the life tenant, his or her interest in the property terminates. A life estate is

limited to the life of a specific person called a *life tenant*. The life tenant retains the use and/or the possession of the property held in the life estate for the duration of his or her life. An individual who receives the ownership rights of the real property upon the death of the life tenant is the *remainderman*.

Once an Acknowledged Statement to Terminate a Life Estate is recorded, the public record is updated to show that the life estate has been terminated. Future property tax bills will be sent to the remainderman.

Summary

If a deceased person owned real property as a joint tenant with right of survivorship with another individual, or possessed real property in a life state as a life tenant, the Montana legislature has provided a way for their survivors to update the public record of ownership. This procedure allows the surviving joint tenant or remainderman to update the public record outside the probate process.

By filing the appropriate documents with the clerk and recorder's office in the county where the land is located, the legal record will show the property is owned by the survivor(s). The simplified method used to terminate a joint tenancy or life estate is not available for real property held as tenants in common.

Acknowledgement

This MontGuide has been reviewed by members of the following:

- Business, Estates, Trusts, Tax and Real Property Section: State Bar of Montana
- Montana Association of Clerk and Recorders
- Senior and Long Term Care Division: Montana Department of Public Health and Human Services

Further information

For more information about Dying in Montana Without a Will visit the interactive website to discover how your property will be distributed under Montana law if you are a Montana resident and if you pass away without a written will (as do 7 out of 10 Americans). www.montana.edu/dyingwithoutawill.

All publications listed below are available online at www.montana.edu/estateplanning and from your county MSU Extension office. Addresses, telephone numbers and email addresses for Montana's 53 county offices are provided at www.msuxextension.org/localoffices.cfm.

- *Probate in Montana* ([MT199006HR](#))
- *Nonprobate Transfers* ([MT199509HR](#))
- *Property Ownership* ([MT198907HR](#))
Contains information about the three main forms of Property Ownership recognized in Montana: solely owned, joint tenancy with right of survivorship, and tenants in common.
- *Beneficiary Deeds in Montana* ([MT200707HR](#))
Contains information about how to transfer real property to one or more beneficiaries without probate by using a Beneficiary Deed.
- *Life Estate: A Useful Estate Planning Tool* ([MT200510HR](#))



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