

## Law and Surveying

Legal Surveys Branch, Ministry of Consumer and Commercial Relations

### Joint Tenancy and Tenancy in Common

A question has been asked of our Ministry as to the difference between "joint tenancy" and "tenancy in common," and it was felt that this matter would be of sufficient interest to Ontario Land Surveyors in general to warrant a short reply in this publication. Some of what follows has been taken directly from *Anger's Digest of Canadian Law*.

More than one person can own the same piece of real property without the need of establishing a general partnership. The situation where two or more persons together exercise the rights of ownership over all the same real property is known as co-ownership. The important feature of any type of co-ownership is that the rights of all owners extend over the entire property. If A and B are the co-owners of Blackacre, there is no one section to which A or B can point and say he holds it to the exclusion of the other.

Co-owners may own real property either as joint tenants or as tenants in common. While in both cases the ownership of all parties extends to the entire property, the two types of ownership have important practical differences.

#### A. Joint Tenancy

The main feature of joint tenancy is right of survivorship. If A and B hold Blackacre as joint tenants and A dies, Blackacre automatically becomes the sole and exclusive property of B. It would not make any difference if A had willed all his estate to C; if the joint tenancy exists at the date of A's death, the jointly held land vests in B.

If it is desired that persons should hold land as joint tenants, it must be so stated in the instrument creating their interest; otherwise, by statute, the law presumes it was intended they should hold as tenants in common.

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directed by previous meetings, a charter and set of by-laws had been drawn up by lawyers to obtain a federal charter. The C.I.S. introduced a new element in that they want the potential C.C.L.S. to be a branch of the C.I.S. and have introduced a charter of their own to this effect. This could cause a serious problem in that a minority number of the provinces are leaning toward this view and it could cause a split in the future C.C.L.S. before it is even effectively organized.

#### Characteristics

The characteristics of joint tenancy are unities of interest, title, time and possession.

- (1) *Unity of Interest*: Joint tenants must have the same interest or period of duration; e.g., one cannot be tenant in fee simple and the other a tenant with a limited fee, or one a tenant for life and the other for years.
- (2) *Unity of Title*: They must have the same title—their estate must be created by the same act such as one grant. Joint tenancy cannot arise by descent\*, or operation of law.
- (3) *Unity of Time*: Their estates must vest at the same time, except under the Statute of Uses and under wills, in which cases persons may take as joint tenants at different times.
- (4) *Unity of Possession*: They must have unity of possession—each has an undivided interest in the whole property as well as in his proportionate share.

#### Incidents

On account of the unities mentioned above,

- if joint tenants make a lease, the rent, though paid to one, ensures to the benefit of all;
- one joint tenant cannot be sued without joining all;
- one cannot sue the other for trespass;
- one cannot do any act which tends to injure the other's estate, except to sever the tenancy;
- one may lease his share to the other and have the right of distress;
- one may sue the other for account for receiving more than his due share of profits;

At the conclusion of the meeting, motions were passed receiving the proposed constitution and by-law as prepared by our lawyer and a motion was passed stating that each Provincial Council should consider the proposal by the C.I.S. and report back at the next meeting in October at Ottawa.

My recommendation is that the Council of the AOLS establish a committee composed of Mr. Petzold, Mr. Gren Rogers and myself to investigate this matter of organizing the C.C.L.S. and report to Council.

— at common law, a private person and a corporation could not be joint tenants, but only tenants in common. This has been changed by the Ontario Conveyancing and Law of Property Act so that a corporation may be a joint tenant and on its dissolution surviving joint tenant takes.

#### Severance

For a joint tenancy to continue the three unities of title, interest and possession must exist. The unity of time of vesting is only applied at its creation. Therefore, to destroy a joint tenancy it is only required to destroy one of the unities of title, interest or possession.

### B. Tenancy in Common

#### Characteristics

In a tenancy in common, the only unity is that of possession and tenants in common may hold under different titles, for different interests, and take at different times. One may hold in fee simple, another in a limited fee; one may hold for life, another for years; one may take by descent, the other by purchase; the estate of one may have vested 30 years ago, that of the other yesterday.

#### Incidents

There is no right of survivorship between tenants in common, the share of each passing to his descendants on his death unless otherwise disposed of by will.

Where two tenants in common make a joint lease reserving one entire rent, both must sue to recover such rent; but, where there is a separate reservation to each, each must bring separate action.

#### Dissolution

A tenancy in common can be dissolved in only two ways:

- (1) By uniting all title and interests in one person as by all selling to one.
- (2) By partition, so that each tenant becomes the owner in severalty of a divided share. — R. R. SCOTT.

*\*Descent: The title whereby a man, under the former law of inheritance, on the death of his ancestor intestate (no will made) acquired his estate by right of representation as his heir-at-law.*

*During the three days following the 10th meeting of Presidents and Representatives of Provincial Associations and Corporations, Jim Dearden attended the 67th Annual Meeting of the Canadian Institute of Surveying, also convened in Vancouver. The C.I.S. is a scientific body and its meetings are primarily concerned with technical papers. The business session is very brief and is held on the afternoon of the last day. Mr. Jack Hadden is the incoming president. The AOLS president made a brief presentation on the opening day.*