

## JOINT OWNERSHIP OF PROPERTY

When two people buy property together, they can acquire the property in several different ways, each of which will have a different impact on their relationship. Florida recognizes three forms of joint ownership which buyers can designate in their deed. Which one you designate will affect your rights as a part owner of the property.

The most common is called a “tenancy by the entirety,” which is a legal term for the holding of property by a husband and wife. If a married couple buys property, they will be acquiring the property in this way unless they specify otherwise. Under this arrangement, each person is considered to be the owner of the “entire” property, jointly with the other (thus the name). This means that if one dies, the property cannot be transferred by will or probate. Instead, the survivor automatically becomes the sole owner. Because each person owns the entire property, neither can grant a mortgage or transfer an interest without the other, except that either party can transfer to the other. Similarly, judgments and liens cannot be enforced against the property unless they are the obligation of both parties. Since this form of ownership is unique to married couples, in the event of a divorce their ownership automatically converts to a form of ownership known as a “tenancy in common,” unless the divorce decree specifies that it will be a “joint tenancy.”

A joint tenancy has the same features as a tenancy by the entirety, with two differences. First, the parties don’t need to be married, so any number of people can be joint tenants. Second, any party can mortgage or transfer his or her interest separately from the others and without their consent (and likewise a judgment or lien against one party can be enforced against his or her interest), although any of these actions will terminate the joint tenancy and convert it to a tenancy in common. The most important feature is the right of survivorship, which means that on the death of one party the others automatically become the sole owners, just like property held by a married couple. An exception is where one party murders another, in which case the deceased party’s interest passes to his heirs instead of to the murderer. A deed into two unmarried persons will not create a joint tenancy with rights of survivorship unless it specifies that relationship; otherwise, it will create a tenancy in common.

A tenancy in common is an arrangement whereby any number of parties own the property in different percentage interests, which should be specified in the deed (otherwise they will be deemed to own equal shares). Each party has the right to occupy the property (although he cannot exclude the others), even though he only owns a part interest. Each party can mortgage or transfer his interest, which is also subject to the enforcement of judgments and liens. Unlike the other relationships, in this arrangement there is no right of survivorship, so a party’s interest can be inherited by his heirs instead of automatically going to the other parties upon his death. Finally, if there is a dispute about the property, any party can petition the court to split the property up into smaller pieces which would be allocated individually among the parties on an equitable basis according to their respective percentage interests. If this can’t be done (because it may not be feasible, or because it may violate local subdivision regulations, for example), the

court can order the property sold and the sales proceeds split up the same way.

When property is held as a joint tenancy or a tenancy in common, it is a good idea for the parties to enter into a written agreement specifying how they will handle the development and use of the property, as well as any disputes which may arise among them. Under a joint ownership arrangement, if one party incurs expenses relating to the property (such as taxes, insurance or debt service), he cannot normally require the other parties to reimburse him for their share of expenses in the absence of an agreement which provides for that.

Almost all married couples will want to acquire property as a tenancy by the entirety because it is particularly suited to their relationship, but if you're thinking about buying property with a friend, relative or business associate, you should carefully consider which of the two other forms of ownership will best suit your needs, or whether you might want to form a company such as a corporation or limited liability company to take title.

Word Count: 769