

2024 Joint Tenancy Changes

After May 1, 2024, any recorded deed containing 2 or more persons as grantees will create joint tenancy

The Basics of Tenancy

Tenancy refers to how ownership rights in real property are held. In Utah, individuals typically hold title as either tenants in common or joint tenants.

Tenants in Common

A tenant in common owns a fractional interest in the real property, which may be specified or divided equally among the other owners. For instance, if the deed was recorded prior to May 1, 2024, and the title is held as "Stanley Smith and Jane Doe," each owner is assumed to own 50% of the property. Upon the death of a tenant in common, their interest in the property passes to their heirs or devisees, not to the other owners. After May 1, 2024, a tenancy in common statement must be included on the deed.

Joint Tenants

Joint Tenancy operates differently, as a joint tenant's interest is equal and undivided. With title held in joint tenancy, there are rights of survivorship for the other vested owners. When a joint tenant dies, the other owners need only record an affidavit to terminate the interest of the deceased, and then title will pass automatically to the surviving owners.

Creating Joint Tenancy

Before May 5, 1997, joint tenancy was established by adding the phrase "as joint tenants" or "tenancy by entirety" after the grantee's names on the recorded deed. After that date, presumed joint tenancy was created by including the phrase "husband and wife" or "as joint tenants" after the grantee's names. From May 4, 2022, to May 1, 2024, any designation of a married or spousal relationship would create presumed joint tenancy.

2024 Update to Tenancy Laws

House Bill 37, passed during this year's legislative session, modifies Utah's joint tenancy statute (57-1-5). For deeds recorded after May 1, 2024, a recorded deed with **"two or more persons"** will create a presumed joint tenancy.

Pre-Listing

- Find out the vested owner-from the Recorder's office!
- Ask for a property profile, abstract & the vesting deed
- Don't hesitate on getting advice or help

When title is held by individuals

- What was the tenancy?
- How many people have an interest?
- Is probate necessary?
- Did they leave behind a will?
 - Testate (probate within 3 years)
 - Intestate (no will or after 3-year limit)

When title is held by a trust

- What type of trust are you dealing with?
- Who has authority to sign for the trust?
 - Family Trust documents
 - Certification of Trust

Don'ts for Personal Representatives & Successor Trustees

- Don't mix trust/estate assets with your own
- Don't use assets from the trust/estate for your own benefit
- Don't play favorites with beneficiaries, follow instructions

During the Listing/Offer Period

- Remind clients about the dangers of comingling funds- Open new bank accounts if necessary
- Order the Title Report (and read it!)
- Remind clients to obtain original death certificates and decedent social security numbers
- Keep handy copies of signed disclosures, offers, inspections, et.
- Remind Successor Trustees and Personal Representatives they are acting for the trust/estate
- Address buyer concerns about authority of the signers

At Settlement/Closing

- Request estimated Settlement Statements & 1099 forms early for your seller
- Arrive at settlement with all the copies and combine them with the closing package

Joint Tenant

1. Ownership is undivided / No limit to number of joint tenants
2. Reserved for individuals only, entities not eligible
3. Four unities of title should exist- 1) Time, 2) Title, 3) Interest, 4) Possession
4. Created by specific language, "Joint Tenants" or from 5/5/1997 to 5/3/2022 "Husband & Wife", from 5/4/2022 "Spouses" creates joint tenancy. From 5/1/2024 a recorded deed with "two or
5. more persons" will create a presumed joint tenancy
6. Joint tenancy is **not** created by phrases such as "A Married Man", "A Married Woman" or "Married"
7. Can be cancelled by divorce, murder, or other conveyance

Tenant in Common

1. Ownership is divided by number of owners or specified share of ownership
2. Prior to 5/1/2024, if deed does not create joint tenancy, tenancy is common is assumed, after that date a tenancy in common statement must be included on the deed.
3. Upon the death of a tenant in common their interest in the real property transfers to the decedent's estate (Heirs or Beneficiaries)
4. If two entities are owners, each entity is a tenant in common

Death of a Tenant in Common or Sole Owner

Testate – Valid Will & Probate within 3 years

1. Judge Validates Will
2. Judge Appoints Personal Representative & Issues Letters Testamentary
3. Personal Representative administers estate (supervised or unsupervised)
4. Personal Representative's deed recorded with original death certificate and letters attached

Intestate – No Will

1. Court determine heirs, issues decree, and/or names personal representative
2. Personal Representative administers estate (supervised or unsupervised)
3. Personal Representative's deed recorded with original death certificate and decree/letters attached

Property vested in a Family Trust – Essential Elements

1. Deed to family trust must be properly executed and recorded.
 - Use a warranty deed
 - Grantee should contain name of the trustee(s), complete name, and date of the trust
 - Address of trustees included also (top left-hand corner)
2. Most family trusts are inter-vivos, meaning the trust was created by the settlor during their life
3. Most family trust are revocable- this means the trust can be modified by the settlor at any time
4. Trustees & successor trustees cannot grant power of attorney
5. Trustees or successor trustees must establish their authority & capacity to sign
 - Copy of trust document or certification of trust (in some cases).
6. Successor Trustees should be wary about co-mingling funds & obtain an EIN for 1099s reporting

Property vested in a Business Entity

Sufficient evidence is required to establish the signor's authority to bind the transaction & property

1. LLC's & Series LLC's – Copies of business entity documents including articles of organization, operating agreements, & unanimous consent of members/managers
2. Partnerships & Limited Partnerships- Copies of business entity documents including partnership agreements & operating agreements
3. Corporations - Copies of business entity documents including corporate resolutions permitting the sale/purchase/financing

Utah Business Entity Search: <https://secure.utah.gov/bes/>

**Questions regarding entities, authority, or capacity should be resolved
at listing or before an offer is made on a property**

Every signer must have valid identification

- Passport, Driver's License, State ID from Government with the 3 following items- 1) Photograph 2) Signature 3) Physical Description
- **The following are not valid primary ID's:** Driver Privilege Card, Birth Certificate, Marriage License, Social Security Card

Post Probate/Conservatorship:

- Letters Testamentary- Signed order from the court stating the name(s) of the personal representative(s) & indicating whether the administration of the estate is supervised or unsupervised.
- If the estate is supervised, or for any situation regarding determining heirs, consult Backman's legal team for guidance
- Conservator vs Guardian – Guardian manages care & day to day needs of minor/incapacitated person & the conservators manage their property (estate). A Conservator signs agreements, contracts & at settlement/closing.
- Always consult legal team when dealing with conservatorship.

Family Trust

- Backman requires either: 1- A copy of the family trust (Best practice) or
- 2- A certification of trust containing the following elements – a. Statement that identifies the trust exists & has not been revoked, b. Date the trust instrument was created, c. Identity of Settlor(s), d. Identity & Address of the acting trustee(s), e. Powers of the trustee, f. How these powers relate to current transaction, 7. Revocable vs. Irrevocable trust “& the identity of any person holding a power to revoke the trust”, g. The name in which title to the trust may be taken (We need enough information to ascertain the acting trustees & their powers, including applicable pages from the trust)
- If a trustee has passed away, we'll death certificates to prepare affidavit of surviving trustee or successor trustee
- Trustees are not allowed to grant power of attorney (unless granted by the trust, seek legal team help)
- Trustees may resign. Resignation form nominates a new trustee, & new trustee must accept nomination
- When vesting property into a trust: Name of trustees, complete & correct name of trust, date of trust

LLC & Series LLC

- Copies of business entity documents from the State of Utah (minimum requirement).
- LLCs are either member led, or manager led (not both)
- Obtain copy of operating agreement (best practice). Operating agreements are mandatory for Series LLC
- Synch up operating agreement with what is filed with the State
- Prepare or obtain a statement of authority (DocuSign is generally ok)
- Signature of each member or manager. Statements of Authority, Use of unanimous consent of members / officers of LLC may be required

Corporation & S-Corps

- Copies of business entity documents from the State of Utah (minimum requirement)
- Additional requirements may include 1) Board Resolutions, 2) Unanimous Consent of Directors of Corporation (Reference UCA §16-10a-821), 3) Officers/signing authority

Partnerships

- Obtain copy of partnership agreement
- Download copies of business entity documents from the State of Utah (minimum requirement)
- All general partners must sign. Review agreement for other requirements.

Warranty Deed

Grantor conveys & warrants the title with 5 statutory covenants:

1. the grantor lawfully owns fee simple title to and has the right to immediate possession of the premises;
2. the grantor has good right to convey the premises;
3. the grantor guarantees the grantee, the grantee's heirs, and assigns in the quiet possession of the premises;
4. the premises are free from all encumbrances;
5. the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the premises in the grantee, the grantee's heirs, and assigns against all lawful claims whatsoever.

Trustee's Deed

A conveyance without covenant or warranty, expressed or implied, given to the grantee following a trustee's sale.

Personal Representative's, Guardian's, or Conservator's Deed

Conveyances made without covenant or warranty by approved representatives named in decrees or letters issued by the court.

Evidence of capacity of the grantor is attached to the conveyance.

Divorce Decree

A certified copy of a decree of divorce can be recorded as a conveyance if the legal description and parcel number for the property is included in the decree.

Grant Deed

The effect of a grant deed is not enumerated in the Utah Code. If recorded, a grant deed has the effect of a quit claim deed.

Special Warranty Deed

Grantor conveys & warrants the title with 2 statutory covenants:

1. the granted property is free from all encumbrances made by that grantor; and
2. the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the property in the grantee, the grantee's heirs, and assigns against any lawful claim and demand of the grantor and any person claiming or to claim by, through, or under the grantor.

Quit Claim Deed

A conveyance without warranty of all right, title, interest, and estate of the grantor

Sheriff's Deed

A conveyance without covenant or warranty, expressed or implied, given to the grantee following a sheriff's sale. & 6-month redemption period

Revocable Transfer on Death Deed

A conveyance without warranty where the grantor's interest in real property transfers to named beneficiaries.

Deed must be executed with the completed form
Deed can be revoked by recording a revocation, recording a new transfer on death deed, or transferring the property to someone else during the grantor's lifetime.

Tax Deed

A conveyance without warranty from the county to the high bidder from a property tax sale.

1. Tax deeds do not extinguish creditor rights
2. Tax deeds are not insurable & title underwriters require quiet title actions after tax sales.

Patent

A conveyance of real property from the Federal Government