

31. Co-Ownership of Real Property [Details]

For joint rights and obligations generally, see article 50 of title 13; for joint bank deposits, see §11-105-105 and article 15 of title 15; for joint tenancy in personal property, see §38-11-101.

§ 38-31-101. Joint tenancy expressed in instrument - when

(1) Except as otherwise provided in subsection (3) of this section and in section 38-31-201, no conveyance or devise of real property to two or more natural persons shall create an estate in joint tenancy in real property unless, in the instrument conveying the real property or in the will devising the real property, it is declared that the real property is conveyed or devised in joint tenancy or to such natural persons as joint tenants. The abbreviation "JTWROS" and the phrase "as joint tenants with right of survivorship" or "in joint tenancy with right of survivorship" shall have the same meaning as the phrases "in joint tenancy" and "as joint tenants". Any grantor in any such instrument of conveyance may also be one of the grantees therein.

(1.5)

(a) The doctrine of the four unities of time, title, interest, and possession is continued as part of the law of this state subject to subsections (1), (3), (4), (5), (6), and (7) of this section and paragraph (b) of this subsection (1.5).

(b) Subsections (1), (3), (4), (5), (6), and (7) of this section are intended and shall be construed to clarify, supplement, and, limited to their express terms, modify the doctrine of the four unities.

(c) For purposes of this subsection (1.5), the "doctrine of the four unities of time, title, interest, and possession" means the common law doctrine that a joint tenancy is created by conveyance or devise of real property to two or more persons at the same time of the same title to the same interest with the same right of possession and includes the right of survivorship.

(2) (Deleted by amendment, L. 2006, p. 240, §1, effective July 1, 2006.)

(3) A conveyance or devise to two or more personal representatives, trustees, or other fiduciaries shall be presumed to create an estate in joint tenancy in real property and not a tenancy in common.

(4) An estate in joint tenancy in real property shall only be created in natural persons; except that this limitation shall not apply to a conveyance or devise of real property to two or more personal representatives, trustees, or other fiduciaries. Any conveyance or devise of real property to two or more persons that does not create or is not presumed to create an estate in joint tenancy in the manner described in this section shall be a conveyance or devise in tenancy in common or to tenants in common.

(5)

Colo. Rev. Stat. § 38-31-101 Joint tenancy expressed in instrument - when (Colorado Revised Statutes (2021 Edition))

(a) Except as provided in sections 38-35-118 and 38-41-202(4), a joint tenant may sever the joint tenancy between himself or herself and all remaining joint tenants by unilaterally executing and recording an instrument conveying his or her interest in real property to himself or herself as a tenant in common. The joint tenancy shall be severed upon recording such instrument. If there are two or more remaining joint tenants, they shall continue to be joint tenants as among themselves.

(b) Filing a petition in bankruptcy by a joint tenant shall not sever a joint tenancy.

(6)

(a) The interests in a joint tenancy may be equal or unequal. The interests in a joint tenancy are presumed to be equal and such presumption is:

(I) Conclusive as to all persons who obtain an interest in property held in joint tenancy when such persons are without notice of unequal interests and have relied on an instrument recorded pursuant to section 38-35-109; and

(II) Rebuttable for all other persons.

(b) This subsection (6) does not bar claims for equitable relief as among joint tenants, including but not limited to partition and accounting.

(c) Upon the death of a joint tenant, the deceased joint tenant's interest is terminated. In the case of one surviving joint tenant, his or her interest in the property shall continue free of the deceased joint tenant's interest. In the case of two or more surviving joint tenants, their interests shall continue in proportion to their respective interests at the time the joint tenancy was created.

(d) For purposes of the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., a joint tenancy shall be deemed to be a joint tenancy with equal interests among the joint tenants regardless of the language in the deed or other instrument creating the joint tenancy.

(7) Nothing in this section shall be deemed to abrogate any existing case law to the extent that such case law establishes other means of severing a joint tenancy.

(R.S. p. 106, § 3. G.L. § 162. G.S. § 200. R.S. 08: § 671. C.L. § 4872. CSA: C. 40, § 4. L. 39: p. 285, § 1. CRS 53: § 118-2-1. L. 55: p. 720, § 1. C.R.S. 1963: § 118-2-1. L. 96: Entire section amended, p. 661, § 15, effective July 1. L. 2002: Entire section amended, p. 1361, § 14, effective July 1. L. 2003: (1) amended, p. 2002, § 67, effective May 22. L. 2006: Entire article amended, p. 240, § 1,

effective July 1. L. 2008: (1.5), (5), (6), and (7) added, p. 681, § 1, effective April 25.)

ANNOTATION

Law reviews. For article, "Five New Real Estate Standards for Denver", see 26 Dicta 131 (1949). For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949). For article, "Joint Tenancy in Colorado", see 26 Dicta 313 (1949). For article, "Signatures on Documents Affecting Title to Colorado Real Property -- Part II", see 12 Colo. Law. 258 (1983). For article, "Commercial Condominium Association Considerations", see 12 Colo. Law. 1090 (1983). For article, "Tenancy by the Entirety in Colorado", see 13 Colo. Law. 230 (1984). For article, "Title to Colorado Real Property Held in Trust", see 31 Colo. Law. 85 (May 2002). For article, "Evolution of Joint Tenancy Law in Colorado: Changes to CRS § 38-31-101", see 38 Colo. Law. 65 (April 2009).

Joint tenancy in Colorado is strictly limited and its very existence circumscribed by statute. *Smith v. Greenburg*, 121 Colo. 417, 218 P.2d 514 (1950).

Legislative policy is to prefer tenancies in common at the expense of joint tenancies. *Estate of Kwatkowski*, 94 Colo. 222, 29 P.2d 639 (1934).

Joint tenancy and tenancy in common distinguished. The major distinguishing characteristic of joint tenancy, as opposed to tenancy in common, is right of survivorship in each of the cotenants. *Bradley v. Mann*, 34 Colo. App. 135, 525 P.2d 492 (1974), *aff'd*, 188 Colo. 392, 535 P.2d 213 (1975).

A court must presume the tenancies are not joint till something is shown otherwise. *Miller v. Buyer*, 82 Colo. 474, 261 P. 659 (1927).

This section raises a presumption against the creation of joint tenancies, so that if the parties to a partnership had intended a joint tenancy to apply only to one-half of the partnership property, or to a particular one-half interest in it, they could and--because of this section--should have specifically so stated. *In re Sullivan's Estate*, 121 Colo. 494, 218 P.2d 1064 (1950).

In the absence of an affirmative declaration that the estate devised is in joint tenancy, an estate in tenancy in common will be devised, unless it clearly and explicitly appears from the language employed that the testator understood the nature and incidents of the different estates and intended to create a joint tenancy. *Estate of Kwatkowski*, 94 Colo. 222, 29 P.2d 639 (1934); *Chilson v. Reed*, 154 Colo. 149, 389 P.2d 87 (1964).

Mere use of word "jointly" is insufficient for the purpose of expressing a joint tenancy. Estate of Kwatkowski, 94 Colo. 222, 29 P.2d 639 (1934).

Language creates joint tenancy. The statement in a corporate stock certificate that parties "as joint tenants with right of survivorship and not as tenants in common" are the owners of the stock, amply proclaims a joint tenancy, and upon its face the certificate must be considered as accomplishing that result. Eisenhardt v. Lowell, 105 Colo. 417, 98 P.2d 1001 (1940).

Rights vest at creation of joint tenancy. In real property, rights under a joint tenancy are fixed and vested in the joint tenants at the time of the creation of the joint tenancy; and once a joint tenancy is created, the donor no longer has the power to exercise absolute dominion over the property. He may not treat the whole property as his own, he cannot convey to a third party the interest he created in the joint tenant, and while he may occupy the whole property, he cannot exclude the other joint tenants from their right to use and enjoy the property, and he is liable to them for any depleting use he may make of the land. Estate of Lee v. Graber, 170 Colo. 419, 462 P.2d 492 (1969).

Grantees under a joint tenancy deed are presumed to own equal shares in the property conveyed, but parol evidence is admissible to overcome the presumption. Duston v. Duston, 31 Colo. App. 147, 498 P.2d 1174 (1972).

Action by joint tenants inconsistent with survivorship right destroys tenancy. In ascertaining whether a joint tenancy has been destroyed, resulting in a tenancy in common, this state has recently adopted the modern test which focuses on the intent of the parties with regard to the right of survivorship characteristic. Actions by the joint tenants which are inconsistent with the right of survivorship operate to terminate the joint tenancy. Mangus v. Miller, 35 Colo. App. 115, 532 P.2d 368 (1974).

Action against joint tenancy. Where several parties are defendants in a suit to quiet title, in order that they may be sued jointly, it must affirmatively appear that they are joint tenants in whatever interest they claim to have. Miller v. Buyer, 82 Colo. 474, 261 P. 659 (1927).

Gift of joint interest is irrevocable. A gift of a joint interest in real property is complete, perfect, and irrevocable. Estate of Lee v. Graber, 170 Colo. 419, 462 P.2d 492 (1969).

A joint tenant may sever a joint tenancy by conveying the property to himself or herself as a tenant in common without the need for an intermediary strawman. *Taylor v. Canterbury*, 92 P.3d 961 (Colo. 2004).

Debtor's joint tenancy interest in property terminated upon his death. Because a trustee stands in the shoes of the joint tenant, the trustee's interest in the property also terminated upon the debtor's death. *In re Chernushin*, 584 B.R. 567 (D. Colo.), *aff'd*, 911 F.3d 1265 (10th Cir. 2018).

Applied in *Liden's Estate v. Foster*, 103 Colo. 58, 82 P.2d 775 (1938); *Liebhardt v. Avison*, 123 Colo. 338, 229 P.2d 993 (1951); *Franzen v. Zimmerman*, 127 Colo. 381, 256 P.2d 897 (1953).

For tenancy in common of mines, see article 44 of title 34.

§ 38-31-102. Proof of death - certificate of death available - definitions

(1) A certificate of death, a verification of death document, or a certified copy thereof, of a person who is a joint tenant may be placed of record with the county clerk and recorder of the county in which the real property affected by the joint tenancy is located, together with a supplementary affidavit. The supplementary affidavit, which shall be properly sworn to or affirmed by a person of legal age having personal knowledge of the facts, must include the legal description of the real property and a statement that the person referred to in the certificate is the same person who is named in a specific recorded deed or similar instrument creating the joint tenancy. When recorded, the original certificate or verification document and supplementary affidavit, or certified copies thereof, must be accepted in all courts of the state of Colorado as prima facie proof of the death of the joint tenant. The certificate or verification document and supplementary affidavit provided for in this section may also be used to provide proof of the death of a life tenant, the owner under a beneficiary deed, or any other person whose record interest in real property terminates upon the death of such person to the same extent as a joint tenant as provided in this section.

(2) As used in this part 1, unless the context otherwise requires, a "certificate of death or certified copy thereof" means a certificate of death as construed in section 25-2-110(10), C.R.S., that meets the requirements set forth in section 38-35-112 to be admitted as evidence or a copy of such a certificate of death certified by the public office that issued it.

(Amended by 2016 Ch. 145, §1, eff. 8/10/2016. Amended by 2014 Ch. 30, §6, eff. 7/1/2014. L. 23: p. 399, § 1. CSA: C. 92, § 1. CRS 53: § 118-2-2. C.R.S. 1963: § 118-2-2. L. 2002: Entire section amended, p. 1037, § 85, effective June 1. L. 2006: Entire article amended, p. 241, § 1, effective July 1. L. 2014: Entire section amended, (HB 14-1073), ch. 30, p. 177, § 6, effective July 1. L. 2016: (1) amended, (SB 16-133), ch. 145, p. 429, § 1, effective August 10.)

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949). For article, "Highlights of the 1955 Colorado Legislative Session--Real Property", see 28 Rocky Mt. L. Rev. 58 (1955). For article, "Signatures on Documents Affecting Title to Colorado Real Property -- Part II", see 12 Colo. Law. 258 (1983).

This section does not establish mandatory and exclusive method of proving death in joint tenancy. On the contrary, the statute offers a

Colo. Rev. Stat. § 38-31-102 Proof of death - certificate of death available - definitions (Colorado Revised Statutes (2021 Edition))

mere alternative method which may, but need not, be adopted. Spaulding v. Porter, 94 Colo. 496, 31 P.2d 711 (1934).

For certificate of death admitted as evidence of interest in real property, see §38-35-112.

§ 38-31-103. Proof of death - certificate of death unavailable

If a certificate of death, verification of death document, or a certified copy thereof cannot be procured, an affidavit properly sworn to or affirmed by two or more persons of legal age having personal knowledge of the facts and having no record interest in the real property affected by the joint tenancy may be placed of record in the office of the county clerk and recorder of the county in which the real property is located. The affidavit shall include a statement that a certificate of death, verification of death document, or certified copy thereof cannot be procured, and the reason therefor, the legal description of the real property, the date and place of death of the deceased person, and a statement that the person referred to in the affidavit was at the time of death an owner of a joint tenancy interest in the real property. When recorded, the original affidavit, or a certified copy thereof, shall be accepted in all courts in the state of Colorado as prima facie proof of the death of the joint tenant and the date and place of death of the joint tenant. The affidavit provided for in this section may also be used to provide proof of the death of a life tenant or any other person whose record interest in real property terminates upon the death of the person and the date and place of death of the life tenant or other person to the same extent as a joint tenant as provided in this section.

(Amended by 2014 Ch. 30, §7, eff. 7/1/2014. L. 23: p. 399, § 2. CSA: C. 92, § 2. CRS 53: § 118-2-3. C.R.S 1963: § 118-2-3. L. 2002: Entire section amended, p. 1037, § 86, effective June 1. L. 2006: Entire article amended, p. 241, § 1, effective July 1. L. 2014: Entire section amended, (HB 14-1073), ch. 30, p. 177, § 7, effective July 1.)

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949). For article, "Signatures on Documents Affecting Title to Colorado Real Property -- Part II", see 12 Colo. Law. 258 (1983).

For certificate of death admitted as evidence of interest in real property, see §38-35-112.

§ 38-31-104. False swearing or affirming - penalty

Anyone falsely swearing to or affirming any affidavit provided for in sections 38-31-102 and 38-31-103 is guilty of perjury in the second degree and in addition thereto is liable for damages to any person for any loss consequent on the false swearing or affirming or on the recording of the affidavit so falsely sworn to or affirmed.

(L. 23: p. 400, § 3. CSA: C. 92, § 3. CRS 53: § 118-2-4. C.R.S. 1963: § 118-2-4. L. 72: p. 566, § 42. L. 2006: Entire article amended, p. 242, § 1, effective July 1.)

For perjury in the second degree and the penalty therefor, see §§18-8-503 and 18-1.3-501.

§ 38-31-201. Tenancy by the entirety

(1) No conveyance of real property located in this state executed before or after July 1, 2006, shall create a tenancy by the entirety.

(2) A conveyance of real property located in this state executed before July 1, 2006, that purports to create a tenancy by the entirety shall be presumed to create a joint tenancy.

(3) A conveyance of real property located in this state executed on or after July 1, 2006, that purports to create a tenancy by the entirety shall create a joint tenancy.

(L. 2006: Entire article amended, p. 242, § 1, effective July 1.)