

**TERMINATION OF JOINT TENANCY IN
REAL PROPERTY**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Real Estate Code to clarify that a joint tenancy in real estate is converted to a tenancy in common by a joint tenant making a bona fide conveyance of the joint tenant's interest in the property to himself or another. The act provides intent language and retrospective operation.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-1-5, as last amended by Chapter 9, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **57-1-5** is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy.

(1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(b) Every ownership interest in real estate which does not qualify for the joint tenancy presumption as provided in this Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.

(b) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import shall declare a tenancy in common.

(3) A sole owner of real property shall create a joint tenancy in himself and another or others:

(a) by making a transfer to himself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) A "joint tenancy" is severed and is converted into a "tenancy in common" by a joint tenant by making a bona fide conveyance of the joint tenant's interest in the property to himself [~~and~~] or to another [which terminates the joint tenancy].

(6) [~~This act has~~] The amendments to this section in Chapter 124, Laws of Utah 1997 have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

Section 2. Legislative intent and retrospective operation.

(1) It is the intent of the Legislature that the amendments made by this act are merely clarifying amendments that do not enlarge, eliminate, or destroy vested rights and therefore retrospective operation is appropriate.

(2) This act has retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.