

1                   **JOINT TENANCY PRESUMPTION AMENDMENTS**

2                                   2022 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Calvin R. Musselman**

5                                   Senate Sponsor: Kirk A. Cullimore

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7   **LONG TITLE**

8   **General Description:**

9           This bill clarifies a provision related to a joint tenancy interest presumption.

10 **Highlighted Provisions:**

11       This bill:

12           ▶ clarifies that a joint tenancy interest presumption exists between two persons  
13 designated as spouses in the granting documents.

14 **Money Appropriated in this Bill:**

15       None

16 **Other Special Clauses:**

17       None

18 **Utah Code Sections Affected:**

19 AMENDS:

20       **57-1-5**, as last amended by Laws of Utah 2011, Chapter 88

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

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

24       **57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of**  
25 **joint tenancy -- Tenants by the entirety -- Tenants holding as community property.**

26       (1) (a) (i) (A) Beginning on May 5, 1997 and ending on May 3, 2022, [every] an  
27 ownership interest in real estate granted to two persons in their own right who are designated as  
28 husband and wife in the granting documents is presumed to be a joint tenancy interest with  
29 rights of survivorship, unless severed, converted, or expressly declared in the grant to be

30 otherwise.

31 (B) Beginning on May 4, 2022, an ownership interest in real estate granted to two  
32 persons in their own right who are designated as spouses in the granting documents is  
33 presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted,  
34 or expressly declared in the grant to be otherwise.

35 (ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established  
36 between two or more people.

37 (iii) Joint tenancy may not be established between a person and an entity or  
38 organization, including:

39 (A) a corporation;

40 (B) a trustee of a trust; or

41 (C) a partnership.

42 (iv) Joint tenancy may not be established between an entity or organization and another  
43 entity or organization.

44 (b) [~~Every~~] An ownership interest in real estate that does not qualify for the joint  
45 tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common  
46 interest unless expressly declared in the grant to be otherwise.

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

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

51 (ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in  
52 common unless accompanied by joint tenancy language described in Subsection (2)(a), which  
53 creates a joint tenancy.

54 (3) A person who owns real property creates a joint tenancy in himself or herself and  
55 another or others:

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

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

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

62           (5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide  
63 conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or  
64 another, the joint tenancy is severed and converted into a tenancy in common.

65           (b) If there is more than one joint tenant remaining after a joint tenant severs a joint  
66 tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in  
67 joint tenancy.

68           (6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no  
69 retrospective operation and shall govern instruments executed and recorded on or after May 5,  
70 1997.

71           (7) Tenants by the entirety are considered to be joint tenants.

72           (8) Tenants holding title as community property are considered to be joint tenants.