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Backgrounder

LRC 100—Report on Co-Ownership of Land

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There are two ways in which land may be owned by two or more persons: in joint tenancy or as tenants in common. In order to hold land in joint tenancy, the co-owners must meet four legal requirements called the “four unities.” These four unities are unity of title, time, interest, and possession. The major consequence of holding land in joint tenancy is that, upon the death of a co-owner, that co-owner’s share passes directly to the other co-owners by virtue of the *right of survivorship* and it does not pass into the deceased co-owner’s estate. Tenancy in common, on the other hand, depends only on co-owners having equal rights of possession to the land. The four unities need not be present. For example, two persons may own land as tenants in common, with one co-owner having a 3/4 interest and the other having a 1/4 interest. This is not possible in a joint tenancy (as it would violate one of the four unities—unity of interest). A tenant in common’s interest in the land passes into the tenant in common’s estate upon his or her death.

This report considers a series of issues and concerns that relate to co-ownership. Co-ownership suffers from an outmoded legislative framework that regulates the rights of co-owners. This framework is found in provisions scattered through several statutes. The most important of these statutes is the *Partition of Property Act*. This Act is over 100 years old and its age is reflected in its antiquated language and concepts. The report considers the restatement, consolidation, and simplification of these provisions.

The report also examines a number of issues that are specific to joint tenancies. In particular, the report focuses on the rules regarding severance of a joint tenancy. Severance is the process of dissolving a joint tenancy—which, in effect, converts it into a tenancy in common. The current rules governing severance can lead to unfair results. They permit a “secret severance”—that is, they allow one co-owner to sever a joint tenancy without notice to or the consent of the other co-owners. This has the effect of depriving those co-owners of their rights to survivorship. The current rules may also cause a severance in circumstances where no co-owner wants or intends that result, and no purpose is served by it.

The report also reconsiders the old legal doctrines that dictate that joint tenants cannot hold unequal shares in the co-owned land. The report concludes that this rule deprives people of a potentially useful way of holding property.

The report includes draft legislation designed to provide a modern restatement of (1) the rights that co-owners may assert with respect to profits and expenses associated with the land and (2) the remedies of partition and sale of the land. The draft legislation also incorporates changes to the substantive law arising out the Commission's examination of the issues discussed above.

Further Developments

The report's recommendations have not been implemented by legislation.