

CHAPTER VI
JOINT TENANCY AND TENANCY BY THE
ENTIRETIES



STANDARD 6.1

CONVEYANCE OR DEVISE TO
TWO OR MORE PERSONS

STANDARD: A CONVEYANCE OR DEVISE TO TWO OR MORE PERSONS, UNLESS EXPRESSLY DECLARED TO BE IN JOINT TENANCY, IS BY STATUTORY PRESUMPTION CONSTRUED TO CREATE A TENANCY IN COMMON, EXCEPT IN THE CASE OF:

(A) A MORTGAGE; OR

(B) A CONVEYANCE OR DEVISE MADE IN TRUST OR TO PERSONAL REPRESENTATIVES OR TO A HUSBAND AND WIFE.

Problem: Blackacre was deeded to John Doe, an unmarried man, and Richard Roe. No other language was contained in the granting clause. Doe subsequently died. Richard Roe and Anna Roe, his wife, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Upon Doe's death, his undivided one-half interest vested in his heirs or devisees because there was nothing in the granting clause to overcome the statutory presumption. The deed from the Roes to Grant conveyed only Richard Roe's one-half interest.

Authorities: MCL 554.44 and 554.45.

Comment: When two or more persons acquire an interest in land by inheritance from an intestate decedent, each takes his or her respective share in common, even in the case of inheritance by a husband and wife from their child. MCL 700.2103.

STANDARD 6.2

CREATION OF JOINT TENANCY

STANDARD: A DEED OR DEVISE TO TWO OR MORE GRANTEEES, OTHER THAN HUSBAND AND WIFE, “AS JOINT TENANTS” OR “AS JOINT TENANTS AND NOT AS TENANTS IN COMMON,” CREATES A JOINT TENANCY BECAUSE THE LANGUAGE USED CONSTITUTES AN EXPRESS DECLARATION SUFFICIENT TO OVERCOME THE STATUTORY PRESUMPTION THAT A DEED OR DEVISE CREATES A TENANCY IN COMMON UNLESS EXPRESSLY DECLARED OTHERWISE.

Problem A: Blackacre was deeded to John Doe and Richard Roe, ‘as joint tenants’ or ‘as joint tenants and not as tenants in common.’ Doe subsequently died. Roe and his wife later deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Same facts as in Problem A, except the first deed named John Doe and Richard Roe, ‘jointly’ as the grantees. Did Grant acquire marketable title to Blackacre?

Answer: No. Ordinarily the word ‘jointly’ alone is not a sufficiently express declaration to overcome the statutory presumption. The word ‘jointly’ has been held to be ambiguous and to justify the admission of parol testimony as to the intent of the parties.

Problem C: Charles Palmer and Flora Vale were deeded Greenacre as tenants by the entireties when in fact they were not married. Palmer then died. Later, Vale conveyed Greenacre to Simon Grant. Did Grant receive marketable title to Greenacre?

Answer: No. Under the common law rule only a husband and wife can hold title by the entireties and, absent a declaration in the deed or evidence of intent to create a joint tenancy, a conveyance to a man and woman not legally married establishes a tenancy in common. Parol evidence may be admitted in some circumstances to establish the intent to create a joint tenancy.

Authorities: Problem A: *Smith v Smith*, 290 Mich 143, 287 NW 411 (1939).

Problem B: *Taylor v Taylor*, 310 Mich 541, 17 NW2d 745 (1945). In *Murray v Kator*, 221 Mich 101, 190 NW 667 (1922), under special circumstances, a joint tenancy was found to have been created.

Problem C: *In re Kappler Estate*, 418 Mich 237, 341 NW 2d 113 (1983). With respect to admission of parol evidence to establish an intent to create a joint tenancy, see *Scott v Grow*, 301 Mich 226, 3 NW2d 254 (1942). In *Beaton v LaFord*, 79 Mich App 373, 261 NW2d 327 (1977), the court regarded the conveyance itself as constituting an apparent attempt to create a joint tenancy.

Note: See Standard 6.1 with respect to the statutory presumption of tenancy in common.

STANDARD 6.3

SEVERANCE OF JOINT TENANCY

STANDARD: A DEED FROM ONE OF TWO OR MORE JOINT TENANTS TO A THIRD PARTY SEVERES THE JOINT TENANCY AS TO THE INTEREST OF THE GRANTOR AND CONSTITUTES THE GRANTEE A TENANT IN COMMON WITH THE OTHER OWNER(S).

Problem A: Blackacre was owned by John Doe and Richard Roe, “as joint tenants” or “as joint tenants and not as tenants in common.” Doe, a married man, deeded an undivided one-half interest in Blackacre to Simon Grant. Doe subsequently died leaving Roe surviving. Did Grant acquire marketable title to an undivided one-half interest in Blackacre?

Answer: Yes. Upon delivery of the deed from Doe to Grant, Grant and Roe became tenants in common.

Problem B: Blackacre was owned by John Doe, Richard Roe and Edgar Poe “as joint tenants” or “as joint tenants and not as tenants in common.” Doe, a single man, deeded to Simon Grant. Subsequently Roe died leaving Poe surviving. Poe and his wife then deeded to Grant. Did Grant acquire marketable title to all interest in Blackacre?

Answer: Yes. Grant acquired an undivided one-third interest in common by the deed from Doe. Roe and Poe remained joint tenants as to an undivided two-thirds interest which, upon the death of Roe, vested in Poe and was later deeded to Grant.

Authority: *Smith v Smith*, 290 Mich 143, 287 NW 411 (1939).

Comment: This Standard relates to the severance of a joint tenancy (see, Standard 6.2) and not to an attempted severance of a joint life estate with remainder to the survivor (see, Standard 6.4).

STANDARD 6.4

CREATION OF JOINT LIFE ESTATE WITH REMAINDER TO SURVIVOR

STANDARD: A DEED OR DEVISE TO TWO OR MORE PERSONS, OTHER THAN HUSBAND AND WIFE, “AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP,” “AS JOINT TENANTS AND TO THE SURVIVOR,” “AND TO THE SURVIVOR,” OR “OR TO THE SURVIVOR,” OR SOME VARIANT THEREOF, CREATES A JOINT LIFE ESTATE IN ALL OF THE GRANTEES WITH REMAINDER IN FEE TO THE SURVIVOR. THE RIGHT OF THE SURVIVING GRANTEE OR THE ASSIGNEE(S) OF THE GRANTEE TO FULL TITLE CANNOT BE DIVESTED BY ANY ACT OR OMISSION OF ANOTHER GRANTEE.

Problem A: Blackacre was deeded to Jane Doe and Ruth Roe “as joint tenants and to the survivor.” Doe later deeded to Simon Grant. Doe died leaving Roe surviving. Did Roe acquire marketable title to Blackacre?

Answer: Yes. The conveyance by Doe to Grant operated to convey both her life estate and her contingent remainder. However, Roe’s right to full title to Blackacre if she survived Doe was not divested by Doe’s conveyance. Because Doe predeceased Roe, the entire fee vested in Roe and Grant’s interest was terminated.

Problem B: Blackacre was deeded to Jane Doe and Ruth Roe “or to the survivor.” Doe deeded to Simon Grant. Later, Roe died, leaving Doe surviving. Did Grant acquire marketable title to Blackacre?

Answer: Yes. Doe’s deed to Grant conveyed all her interest in Blackacre, consisting of her life estate and contingent remainder. Upon Roe’s death, the entire fee vested in Grant.

Problem C: Blackacre was deeded to Jane Doe and Ruth Roe “as joint tenants with right of survivorship.” Doe later obtained partition of the joint life estates held by Doe and Roe. Doe died leaving Roe surviving. Did Roe acquire marketable title to Blackacre?

Answer: Yes. Roe's right to full title to Blackacre if she survived Doe was not divested by the partition of the joint life estates. Because Doe predeceased Roe, the entire fee vested in Roe upon Doe's death.

Authorities: Problem A: *Schulz v Brohl*, 116 Mich 603, 74 NW 1012 (1898); *Finch v Haynes*, 144 Mich 352, 107 NW 910 (1906); *Jones v Snyder*, 218 Mich 446, 188 NW 505 (1922); *Ames v Cheyne*, 290 Mich 215, 287 NW 439 (1939); *Rowerdink v Carothers*, 334 Mich 454, 54 NW2d 715 (1952); *Ballard v Wilson*, 364 Mich 479, 110 NW2d 751 (1961); *Albro v Allen*, 434 Mich 271, 454 NW2d 85 (1990). See also *Mannausa v Mannausa*, 374 Mich 6, 130 NW2d 900 (1964).

Problem B: *Albro v Allen*, 434 Mich 271, 454 NW2d 85 (1990); *Snover v Snover*, 199 Mich App 627, 502 NW2d 370 (1993).

Problem C: MCL 600.3304 and 600.3308. *Albro v Allen*, 434 Mich 271, 454 NW2d 85 (1990).

STANDARD 6.5

CREATION OF TENANCY BY THE ENTIRETIES

STANDARD: A DEED OR DEVISE TO TWO PERSONS, WHO ARE IN FACT HUSBAND AND WIFE, CREATES A TENANCY BY THE ENTIRETIES, UNLESS A CONTRARY INTENT IS EXPRESSED IN THE DEED OR DEVISE.

Problem: Blackacre was deeded to John Doe and Mary Doe. Later, Mary Doe, as the survivor of herself and John Doe, conveyed Blackacre to Simon Grant by a deed to which a death certificate of John Doe was attached. Did Grant acquire marketable title to Blackacre?

Answer: No. If an affidavit appeared of record showing that John Doe and Mary Doe were in fact husband and wife when they acquired title, title would be marketable in Grant. See, Comment A.

Authorities: MCL 554.44, 554.45 and 565.453. *In re Appeal of Nellie Lewis*, 85 Mich 340, 48 NW 580 (1891); *Jackson City Bank v Fredrick*, 271 Mich 538, 260 NW 908 (1935).

Comment A: The recording of affidavits as to the marital status of persons named in deeds and wills is permitted. Since July 15, 1965, the affidavits must include a description of the real property involved by setting out the description in full or by incorporating the description by reference to a recorded instrument in the chain of title which contains a full and adequate description of the real property. The affidavits are *prima facie* evidence of the facts stated. MCL 565.451a and 565.451c.

Comment B: A conveyance to grantees, “as tenants by the entireties,” if the grantees are not, in fact, husband and wife, creates a tenancy in common absent an express declaration that a joint tenancy was intended. See, *In re Kappler Estate*, 418 Mich 237, 341 NW2d 113 (1983). Under appropriate circumstances, however, Michigan courts have held that the conveyance creates a joint tenancy. See, *Scott v Grow*, 301 Mich 226, 3 NW 2d 254 (1942) and *Beaton v LaFord*, 79 Mich App 373, 261 NW2d 327 (1977).

Comment C: To create a tenancy in a husband and wife other than a tenancy by the entireties, the words of the deed or devise must be clear that the parties did not intend to establish a tenancy by the entireties. In *Hoyt v Winstanley*, 221 Mich 515, 191 NW 213 (1922), a deed identifying the grantees as “Jasper Winstanley and Elizabeth J. Winstanley, his wife, as joint tenants,” was held to create a tenancy by the entireties. The Committee expresses no opinion as to what words in a deed or devise are sufficient to indicate that the parties did not intend to create a tenancy by the entireties.

Note: See Standard 6.2 with respect to creation of a joint tenancy.

STANDARD 6.6

OMISSION OF GIVEN NAME OF SPOUSE

STANDARD: A DEED OR DEVISE TO TWO PERSONS, WHO ARE IN FACT HUSBAND AND WIFE, CREATES A TENANCY BY THE ENTIRETIES UNLESS A CONTRARY INTENT IS EXPRESSED, EVEN THOUGH THE DEED OR DEVISE DOES NOT STATE THE GIVEN NAME OF ONE SPOUSE.

Problem: Blackacre was deeded to Mr. and Mrs. James E. Deer, or to James E. Deer and wife. Later James E. Deer and Mary Deer, husband and wife, deeded Blackacre to J. Ray Brown. Did Brown acquire marketable title to Blackacre?

Answer: No. If an affidavit or other evidence appeared of record showing that the identity of the grantees in the first deed is the same as the identity of the grantors in the second deed, title would be marketable in Grant.

Authority: MCL 565.453.

Comment: The recording of affidavits as to the marital status and identity of persons named in deeds and wills is permitted. Since July 15, 1965 the affidavits must include a description of the real property involved by setting out the description in full or by incorporating the description by reference to a recorded instrument in the chain of title which contains a full and adequate description of the real property. The affidavits are *prima facie* evidence of the facts stated. MCL 565.451a and 565.451c.

STANDARD 6.7

DEED TO HUSBAND AND WIFE, TOGETHER WITH OTHER GRANTEEES

STANDARD: IF THERE ARE SEVERAL GRANTEEES IN A DEED, TWO OF WHOM ARE HUSBAND AND WIFE, IN THE ABSENCE OF A CONTRARY INTENT EXPRESSED IN THE DEED, THE HUSBAND AND WIFE ARE TREATED AS ONE PERSON AND TAKE ONE SHARE AS TENANTS BY THE ENTIRETIES, AS BETWEEN THEMSELVES, AND AS TENANTS IN COMMON WITH THE OTHER GRANTEEES, EACH OF WHOM TAKES ONE SHARE.

Problem A: Blackacre was deeded to James E. Deer and Mary Deer, husband and wife, and Catherine Lemon. Lemon deeded a one-third interest in Blackacre to J. Ray Brown. Later, James E. Deer and Mary Deer, husband and wife, deeded their interest to Brown. Did Brown acquire marketable title to Blackacre?

Answer: No. The deed to James E. Deer and Mary Deer, husband and wife, and Catherine Lemon created a tenancy in common, with the Deers, as tenants by the entireties, and Lemon each owning an undivided one-half interest. Because Lemon deeded only a one-third interest to Brown, she still held title to an undivided one-sixth interest.

Problem B: Blackacre was deeded to Cyrus Greenley and Mary Greenley, husband and wife, Edgar A. Poe and Nancy Poe, husband and wife, and Ruth Whitman. Whitman deeded an undivided one-fifth interest in Blackacre to Simon L. Grant. Later, the Greenleys and the Poes joined in a deed of Blackacre to Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. The deed to Cyrus Greenley and Mary Greenley, husband and wife, Edgar A. Poe and Nancy Poe, husband and wife, and Ruth Whitman created a tenancy in common, with the Greenleys and the Poes, both as tenants by entireties, and Whitman each owning an undivided one-third interest. Because Whitman deeded only an undivided one-fifth interest to Grant, she still held title to an undivided two-fifteenths interest.

STANDARD 6.8

DEED BY ONE SPOUSE TO OTHER SPOUSE

STANDARD: IF TITLE TO REAL PROPERTY IS HELD IN TENANCY BY THE ENTIRETIES, A DEED FROM ONE SPOUSE TO THE OTHER IS EFFECTIVE TO TERMINATE THE TENANCY.

Problem A: Blackacre was owned by J. Ray Brown and Mary Brown, husband and wife, as tenants by the entireties. Later J. Ray Brown, a married man, deeded Blackacre to Mary Brown, his wife, who, in turn, deeded it to James E. Deer. Did Deer acquire marketable title to Blackacre?

Answer: Yes.

Problem B: Blackacre was owned by J. Ray Brown and Mary Brown, husband and wife, as tenants by the entireties. Later Mary Brown deeded Blackacre to J. Ray Brown, without expressing her intent in the deed to bar or waive her dower. J. Ray Brown, in turn, as a married man but without having Mary Brown join, deeded Blackacre to Dennis H. Bagley. Did Bagley acquire title to Blackacre free of the dower of Mary Brown?

Answer: No. Although the deed from Mary Brown to J. Ray Brown was effective to terminate the tenancy by the entireties and vest full title in J. Ray Brown, Mary Brown acquired inchoate dower which was not barred. If, however, Mary Brown had expressed her intent in her deed to J. Ray Brown to bar or waive her dower or had expressed the same intent in a separate contract, agreement or waiver, Bagley would have acquired title to Blackacre free of her dower.

Authorities: MCL 557.101 and 558.1. *Wilkinson v Kneeland*, 125 Mich 261, 84 NW 142 (1900); *Elson v Elson*, 245 Mich 205, 222 NW 176 (1928); *Ash v Ash*, 280 Mich 198, 273 NW 446 (1937); *Hearns v Hearns*, 333 Mich 423, 53 NW2d 315 (1952); *Tamplin v Tamplin*, 163 Mich App 1, 413 NW2d 713 (1987).

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Note: See Standard 4.9 with respect to barring dower by written contract, agreement or waiver.

STANDARD 6.9

CONVEYANCE OF ENTIRETIES PROPERTY BY ONE SPOUSE TO THIRD PERSON

STANDARD: NEITHER SPOUSE, ACTING ALONE, CAN ALIENATE OR ENCUMBER TO A THIRD PERSON AN INTEREST IN THE FEE OF REAL PROPERTY HELD AS TENANTS BY THE ENTIRETIES.

Problem A: Blackacre was owned by Edgar A. Poe and Mary Poe, husband and wife, as tenants by the entireties. Mary Poe, acting alone, deeded Blackacre to Simon L. Grant. Subsequently Mary Poe died and Edgar A. Poe, as an unmarried man, deeded Blackacre to Paul Ingram. Did Ingram acquire marketable title to Blackacre free of any interest in Grant?

Answer: Yes. The same result would occur if the instrument executed by Mary Poe alone had been a mortgage.

Problem B: Blackacre was owned by James E. Deer and Mary Deer, husband and wife, as tenants by the entireties. Mary Deer executed a quit claim deed of Blackacre to Simon L. Grant. James E. Deer did not join. Subsequently, James E. Deer predeceased Mary Deer. Did Grant acquire marketable title to Blackacre?

Answer: No. The quit claim deed was not effective to convey any interest. If the deed to Grant had been a warranty deed, it is possible that Mary Deer would be estopped to assert her title as survivor. The Michigan Supreme Court has held that, if one purports to convey by warranty deed real property which he or she does not own, any after-acquired interest inures to the benefit of his or her grantee, but the Court has not yet determined whether this principle applies to a warranty deed executed by only one tenant by the entireties who later becomes the survivor. The Committee therefore expresses no opinion as to the effect of a warranty deed under the facts stated.

Problem C: Blackacre was owned by J. Ray Brown and Sarah Brown, husband and wife, as tenants by the entireties. In 1973, J. Ray Brown, acting alone, leased Blackacre to Les Freebie for a term of five years. The

lease was recorded promptly. Was the lease valid?

Answer: Yes, but it was subject to being terminated if J. Ray Brown predeceased Sarah Brown before the expiration of the five-year term. Before the enactment of MCL 557.71, which became effective December 10, 1975, it had been held that the husband had the exclusive right to the management and control of entireties property and the exclusive right to income derived from the property and any crops grown there. The husband, acting alone, could enter into a valid lease of entireties property, subject only to the limitation that the lease would cease to be valid should the wife become the sole owner through the death of the husband.

Problem D: Same facts as in Problem C, except that the lease was executed on January 2, 1999. Was the lease valid?

Answer: No. A lease of enteritis property executed on or after December 10, 1975 must be signed by both husband and wife. MCL 557.71 provides that “A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety.” The Committee has not considered the constitutionality or the effect of MCL 557.71 with respect to a tenancy by the entireties created before that statute’s effective date.

Authorities: Problem A: *Vinton v Beamer*, 55 Mich 559, 22 NW 40 (1885); *Speier v Opfer*, 73 Mich 35, 40 NW 909 (1888); *Ernst v Ernst*, 178 Mich 100, 144 NW 513 (1913); *Truitt v Battle Creek*, 205 Mich 180, 171 NW 338 (1919); *Bailey v Grover*, 237 Mich 548, 213 NW 137 (1927); *Elson v Elson*, 245 Mich 205, 222 NW 176 (1928); *Robinson v Commissioner of Internal Revenue*, 63 F2d 652 (CA 6, 1933); *Nurmi v Beardsley*, 275 Mich 328, 266 NW 368 (1936); *Arrand v Graham*, 297 Mich 559, 298 NW 281 (1941); *French v Foster*, 307 Mich 361, 11 NW2d 920 (1943); *Berman v State Land Office Board*, 308 Mich 143, 13 NW2d 238 (1944); *Schultz v Silver*, 323 Mich 454, 35 NW 2d 383 (1949); *Hearns v Hearns*, 333 Mich 423, 53 NW2d 315 (1952). See also *Williams v De Man*, 7 Mich App 71, 151 NW2d 247 (1967).

Problem B: *Naylor v Minock*, 96 Mich 182, 55 NW 664 (1893); *Duffy v White*, 115 Mich 264, 73 NW 363 (1897); *Dye v Thompson*, 126

Mich 597, 85 NW 1113 (1901); *Ernst v Ernst*, 178 Mich 100, 144 NW 513 (1913); *Agar v Streeter*, 183 Mich 600, 150 NW 160 (1914).

Problems C and D: MCL 557.71. *Morrill v Morrill*, 138 Mich 112, 101 NW 209 (1904); *American State Trust Co of Detroit v Rosenthal*, 255 Mich 157, 237 NW 534 (1931); *Marks v Corliss' Estate*, 256 Mich 460, 240 NW 71 (1932); *Wuerth v Wuerth*, 270 Mich 628, 259 NW 346 (1935); *Dombrowski v Gorecki*, 291 Mich 678, 289 NW 293 (1939); *Arrand v Graham*, 297 Mich 559, 298 NW 281 (1941).

STANDARD 6.10

DEED IN WHICH GRANTOR IS ALSO GRANTEE BEFORE OCTOBER 14, 1955

STANDARD: A JOINT TENANCY, A JOINT LIFE ESTATE WITH REMAINDER TO THE SURVIVOR, OR A TENANCY BY THE ENTIRETIES, COULD NOT BE CREATED BY A DEED DELIVERED BEFORE OCTOBER 14, 1955, IF THE GRANTOR WAS ALSO ONE OF THE GRANTEES.

Problem A: On September 1, 1955, John Doe, a married man and the sole owner of Blackacre, delivered a deed describing Blackacre naming himself and Mary Doe, husband and wife, as grantees. Later John Doe died and Mary Doe delivered a deed describing Blackacre naming Simon Grant as grantee. Did Grant acquire marketable title to Blackacre?

Answer: No, unless Mary Doe succeeded to all of John Doe's interest through his estate. Because the first deed did not produce unity of time or title, it was ineffective to create a tenancy by the entireties. John Doe and Mary Doe became tenants in common. Consequently, an undivided one-half interest vested in John Doe's heirs or devisees.

Problem B: On September 1, 1955, John Doe, a single man and the sole owner of Blackacre, delivered a deed describing Blackacre naming John Doe and Richard Roe "as joint tenants with full right of survivorship and not as tenants in common." Later Doe died and Roe and his wife deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Because the first deed did not produce unity of time or title, it was ineffective to create a joint life estate with remainder to the survivor. John Doe and Richard Roe became tenants in common. Consequently, an undivided one-half interest vested in John Doe's heirs or devisees.

Authorities: *Pegg v Pegg*, 165 Mich 228, 130 NW 617 (1911); *Wright v Knapp*, 183 Mich 656, 150 NW 315 (1915); *Mich State Bank v Kern*, 189 Mich 467, 155 NW 502 (1915); *Howell v Wieas*, 232 Mich 227, 205

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NW 55 (1925); *Union Guardian Trust Co v Vogt*, 263 Mich 330, 248 NW 639 (1933); *Price v National Union Fire Insurance Co*, 294 Mich 289, 293 NW 652 (1940); *Atha v Atha*, 303 Mich 611, 6 NW 2d 897 (1942).

Note: See Standard 6.11 with respect to a deed delivered on or after October 14, 1955.

STANDARD 6.11

DEED IN WHICH GRANTOR IS ALSO GRANTEE ON OR AFTER OCTOBER 14, 1955

STANDARD: A JOINT TENANCY, A JOINT LIFE ESTATE WITH REMAINDER TO THE SURVIVOR, OR A TENANCY BY THE ENTIRETIES, MAY BE CREATED BY A DEED DELIVERED ON OR AFTER OCTOBER 14, 1955, IF THE GRANTOR IS ALSO ONE OF THE GRANTEES.

Problem A: In 1973, John Doe, a married man and the sole owner of Blackacre, delivered a deed describing Blackacre naming himself and Mary Doe, husband and wife, as grantees. Later John Doe died and Mary Doe delivered a deed describing Blackacre naming Simon Grant as grantee. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Problem B: In 1973, John Doe, a single man and the sole owner of Blackacre, delivered a deed describing Blackacre naming himself and Richard Roe as grantees, “as joint tenants and not as tenants in common” (or “as joint tenants and to the survivor”). Later Doe died and Roe and his wife delivered a deed describing Blackacre naming Simon Grant as grantee. Did Grant acquire marketable title to Blackacre?

Answer: Yes.

Authority: MCL 565.49 (effective October 14, 1955), provides, in part: “Conveyances in which the grantor or one or more of the grantors are named among the grantees therein shall have the same force and effect as they would have if the conveyance were made by a grantor or grantors who are not named among the grantees.”

Comment: It is the opinion of the Committee that the cited statute is operative as to deeds delivered on or after its effective date (October 14, 1955) but, for constitutional reasons, does not apply to deeds delivered before October 14, 1955.

Note: See Standard 6.10 regarding a deed delivered before October 14, 1955.

STANDARD 6.12

EVIDENCE OF DEATH OF JOINT TENANT OR TENANT BY ENTIRETIES

STANDARD: WHEN A JOINT TENANCY, A JOINT LIFE ESTATE WITH REMAINDER TO THE SURVIVOR, OR A TENANCY BY THE ENTIRETIES HAS BEEN CREATED, A DEED FROM LESS THAN ALL TENANTS NAMED IN THE INSTRUMENT WHICH CREATED THE TENANCY SHOULD NOT BE ACCEPTED AS CONVEYING FULL MARKETABLE TITLE IN THE ABSENCE OF RECORD PROOF OF THE DEATH OF EACH TENANT WHO DOES NOT JOIN IN THE DEED.

Problem: Mary Doe and Ruth Roe held title to Blackacre as joint tenants with right of survivorship. Roe executed a deed describing Blackacre naming Simon Grant as grantee. Did Grant acquire marketable title to Blackacre?

Answer: No, unless there is satisfactory evidence of record that Doe predeceased Roe.

Note: See Standard 6.13 as to the recording on or after October 11, 1947 of a deed containing a recital of survivorship.

STANDARD 6.13

REQUIREMENT FOR RECORDING CONVEYANCE FROM SURVIVOR ON OR AFTER OCTOBER 11, 1947

STANDARD: ON OR AFTER OCTOBER 11, 1947, A CONVEYANCE FROM A PERSON WHICH RECITES THAT THE GRANTOR IS THE SURVIVOR OF A DECEASED JOINT TENANT, JOINT LIFE TENANT WITH REMAINDER TO THE SURVIVOR, OR TENANT BY THE ENTIRETIES, IS NOT ENTITLED TO BE RECORDED UNLESS, FOR EACH FORMER OWNER INDICATED TO BE DECEASED, A CERTIFIED COPY OF THE DEATH CERTIFICATE OR OTHER RECORDABLE PROOF OF DEATH IS RECORDED WITH THE CONVEYANCE, OR EVIDENCE OF DEATH HAS BEEN RECORDED PREVIOUSLY AND REFERENCE IS MADE IN THE CONVEYANCE TO THE LIBER AND PAGE OF THE RECORDING.

Problem A: Blackacre was conveyed to John Doe and Mary Doe, husband and wife. Later, Mary Doe, as survivor of John Doe, executed a deed describing Blackacre which was recorded in 1977. No evidence of John Doe's death, other than the recital, was recorded with or referred to in the deed. Was the deed entitled to be recorded?

Answer: No.

Problem B: Same facts as in Problem A, except that the deed Mary Doe executed recited that John Doe's death certificate had been recorded in Liber 1111 at Page 222 of the records of the register of deeds in the county in which Blackacre was located. Was the deed entitled to be recorded?

Answer: Yes.

Problem C: Same facts as in Problem A, except that an affidavit of Ruth Roe was recorded with the deed executed by Mary Doe, stating that John Doe had died before the execution of the deed. Was the deed entitled to be recorded?

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Answer: Yes.

Authorities: Generally: MCL 565.48.

Problem C: MCL 565.451a, 565.451c and 565.453.

STANDARD 6.14

EFFECT OF FAILURE DIVORCE JUDGMENT TO DISPOSE OF REAL PROPERTY

STANDARD: TITLE TO REAL PROPERTY HELD BY HUSBAND AND WIFE AS TENANTS BY THE ENTIRETIES OR AS JOINT TENANTS VESTS IN THEM AS TENANTS IN COMMON WHEN IF THEIR JUDGMENT OF DIVORCE FAILS TO DISPOSE OF THE REAL PROPERTY, EVEN IF THE JUDGMENT IS ENTERED IN ANOTHER JURISDICTION.

Problem A: Blackacre was owned by John Doe and Mary Doe, husband and wife, as tenants by the entireties (or as joint tenants). Later, they were divorced in Michigan. The judgment made no disposition of Blackacre but did contain the provision required by statute with respect to the dower of Mary Doe. Mary Doe died. Later, John Doe, a single man, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No. Grant acquired an undivided one-half interest as a tenant in common with Mary Doe's heirs or devisees. The divorce destroyed the right of survivorship. The provision with respect to the dower of Mary Doe had no application to the interest formerly held as tenants by the entireties or as joint tenants.

Problem B: Blackacre was owned by John Doe and Mary Doe, husband and wife, as tenants by the entireties (or as joint tenants). Later, they were divorced in Iowa. The judgment made no disposition of Blackacre. Mary Doe died. Later, John Doe, a single man, deeded Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre?

Answer: No.

Authorities: Problem A: MCL 552.101 and 552.102. *Montgomery v Montgomery*, 221 Mich 31, 190 NW 687 (1922); *Angeloff v Smith*, 254 Mich 99, 235 NW 823 (1931); *Sullivan v Sullivan*, 300 Mich 640, 2 NW2d 799 (1942); *Flynn v Flynn*, 367 Mich 625, 116 NW2d 907 (1962).

Problem B: MCL 552.102. *Brown v Prisel*, 97 Mich App 188, 292 NW2d 799 (1980).

Comment: MCL 552.102 provides that unless the divorce judgment provides otherwise, a husband and wife owning real property “as joint tenants or tenants by the entirety,” become tenants in common upon being divorced. This statute does not expressly address the status, upon divorce, of title to real property held by a husband and wife as joint tenants with right of survivorship.

STANDARD 6.15

MARRIAGE OF TENANTS IN COMMON OR JOINT TENANTS

STANDARD: WHEN PERSONS WHO ARE NOT HUSBAND AND WIFE OWN REAL PROPERTY AS TENANTS IN COMMON, AS JOINT TENANTS, OR AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, THE OWNERSHIP IS NOT CONVERTED INTO A TENANCY BY THE ENTIRETIES BY THEIR SUBSEQUENT MARRIAGE.

Problem A: Blackacre was deeded to John Doe and Mary Smith, as tenants in common. Later, John Doe and Mary Smith married. Mary Smith Doe then deeded Blackacre to Simon Grant. John Doe did not execute the deed. Did Grant acquire marketable title to any interest in Blackacre?

Answer: Yes. Grant acquired marketable title to an undivided one-half interest.

Problem B: Same facts as in Problem A, except that the first deed conveyed Blackacre to John Doe and Mary Smith as joint tenants with right of survivorship. Did Grant acquire marketable title to any interest in Blackacre?

Answer: Yes. Grant acquired marketable title to a joint life estate with John Doe and a contingent remainder interest in Blackacre. The remainder interest will vest in Grant if Mary Smith Doe survives John Doe.

Problem C: Title to Blackacre, which had been held by John Doe and Mary Doe as tenants by the entireties, became vested in them as tenants in common by a judgment of divorce. Later, John Doe and Mary Doe remarried. Mary Doe then deeded Blackacre to Simon Grant. John Doe did not execute the deed. Did Grant acquire marketable title to any interest in Blackacre?

Answer: Yes. Grant acquired Mary Doe's undivided one-half interest created by the judgment of divorce. The remarriage did not affect the tenancy in common created by the judgment.

Authorities: *McNitt v McNitt*, 230 Mich 303, 203 NW 66 (1925); *Himelson v Galusz*, 309 Mich 512, 15 NW2d 727 (1944); *Cristia v Cristia*, 317 Mich 66, 26 NW2d 869 (1947); *Williams v Dean*, 356 Mich 426, 97 NW2d 42 (1959).