

# Real Property Class 6



### Facts Common to all Concurrent Ownerships

- The property is shared, not split along geographical lines
- Each party owns a present interest in the property
- Each party shares a right to possess the entire property
- A conveyance to two people comes with a reputable presumption that they will take the property as partners and share it equally
- Partition (where allowed):
  - 1. By sale: selling the property and splitting the proceeds
  - 2. In kind: physically dividing the property (preferred method unless impractical)





#### Facts Common to all Concurrent Ownerships (cont.)

- Rights of Co-Tenants
  - Each has the right to use the full property without having to pay rent to the other
  - Right to not be "ousted" by the other party (physically or constructively)
  - If one tenant wrongfully ousts the other, the ousted party can collect rent to that time period
  - If one tenant rents out the property, there's a split in jurisdictions at to whether the rent must be shared





### **Tenancy in Common**

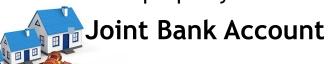
- "Least" of the co-tenancies
- Can exists in three or more people as well as in two
- A conveyance to two people generally creates a tenancyin-common unless stated otherwise
- Each party has the right to possess the whole property
- The partners can own different percentages of the property
- Either party can terminate a tenancy-in-common at any time by demanding a partition or by simply selling his or her share to a third party.
- The tenants can have different estates in the property
  - e.g., One may have a fee simple absolute in her share while the other has a life estate in his.





## Joint Tenancy

- Can only be created expressly
- Can exist in more than two people as long as the other elements are met
- Same as the tenancy-in-common in all aspects (e.g., can be broken up by a sale etc.), EXCEPT
  - The joint tenancy comes with a "right of survivorship"; When one joint tenant dies, the other takes over his or her share
- Thus, property owned in a joint tenancy cannot be devised (given) by a will by either party
- Joint tenancy requires the "four unities"
  - 1. **Time:** Both parties must have received the property at the same time
  - 2. **Title:** Both parties must have received the property via the same written instrument
  - 3. Interest: Both parties must own the same estate in the property
  - 4. **Possession:** Each must have a full and equal right to possess the property





## **Tenancy by the Entirety**

#### Creation

- Can only exist between husband and wife
- Any conveyance to husband and wife together presumptively creates a tenancy by the entirety unless expressed otherwise
- Requires the same four unities as the joint tenancy

#### Rules

- Same rules as a joint tenancy (i.e., right of survivorship) PLUS
- Cannot be transferred by one spouse to a third party without the other's consent
- Exception (some states) for mortgages

#### Termination

- Mortgage foreclosure on the share of one spouse (in the states that allow a share to be mortgaged)
- Divorce







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### **Community Property**

- Only relevant in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin
  Alaska is an elective community property state
- General Principal: Everything acquired by husband or wife during marriage is presumed to belong one half to each spouse.
- Included in the community property rule:
  - Income earned by either spouse
  - Gift given to both spouses during marriage by a third party
- Not included in the community property rule:
  - Property brought into the marriage by one spouse
  - Property acquired during the marriage by a gift or inheritance from a third party
  - Property acquired during the marriage by using resources that were not community property

