

STANDARD NO. 410

PROBLEM:

What is the effect on a joint tenancy caused by a conveyance of an undivided interest in a property held in joint tenancy by:

- A. one (or more) joint tenant(s) to all other joint tenants;
- B. one (or more) joint tenant(s) to fewer than all other joint tenants;
- C. one or more joint tenant(s) to one or more non-owner third parties;
- D. any of the above conveyances in which one (or more) grantor(s) is also a grantee?¹

RECOMMENDATION:

The examiner may consider that a joint tenant can sever her undivided interest, proportionate to the number of joint tenants, by conveyance to a cotenant or to a third party, regardless of present or past marital status of the parties, as follows:

A. Conveyance of such interest by one (or more) joint tenant(s) to all other cotenants transfers no title but serves to extinguish all interest, including the survivorship interest, of the grantor(s). Plural grantees remain joint tenants as to the entire interest in the property.

B. Conveyance of such interest by one (or more) joint tenant(s) to fewer than all other cotenants transfers the severed interest(s) to the grantee(s) who become tenant(s) in common with the other owner(s) as to the severed interest, although they remain joint tenants with the other owner(s) as to the remaining interest. (The grantees hold the transferred interest as joint tenants among themselves if such intent was “clear and convincing” in the conveyance; see Title Standard No. 408).

C. Conveyance of such interest by one (or more) joint tenant(s) to one (or more) non-owner third parties transfers the severed interest(s) to the grantee(s) who become tenant(s) in common with the other owner(s) as to the severed interest, although the other owners remain joint tenants among themselves as to the remaining interest. (The grantees hold the transferred interest as joint tenants among themselves if such intent was “clear and convincing” in the conveyance; see Title Standard No. 408).

D. Conveyances of such interest that name one or more grantors also as grantee(s) may create joint tenancies per 33 M.R.S. §159 (see Title Standard No. 408). If the conveyance does not fall within the provisions of §159 for conveyance to self (selves) and another (others) and if the conveyance is made prior to the September 28, 2011 amendments to §159, the conveyance cannot be considered to transfer any interest from a grantor to self.

DISCUSSION:

¹ This Title Standard addresses only severance of joint tenancy by conveyance. Severance may also be achieved by such means as agreement to hold title in a manner inconsistent with joint tenancy, contract, divorce, forfeiture, partition, renunciation, or slaying. For discussion of the creation of joint tenancy by conveyance see Title Standard No. 408.

Joint tenancy is co-ownership by two or more persons in a fictitious unity, holding one interest together, each tenant having “exactly the same rights in that interest as his cotenant or cotenants.” Creteau, *Maine Real Estate Law*, 83, Castle Pub. Co. (rev. 1971). “The right of survivorship, however, does not pass anything from the deceased joint tenant to the surviving joint tenant. By the very nature of joint tenancy, the title of the first joint tenant who dies terminates with his death, and as both he and his cotenant were possessed and owners per tout, that is of the whole, the estate of the survivor continues as before.” *Strout v. Burgess*, 144 Me. 263 at 279, 68 A.2d 241, at 252 (1949).

In addition to co-ownership and possession, joint tenants share the right of survivorship and the right of severance by alienation of the joint tenant’s interest. *Palmer v. Flint*, 156 Me. 103, at 112, 161 A.2d 837 at 842 (1960). Severance is defined as “[t]he destruction of any one of” the unities of a joint tenancy. *Tiffany Real Property*, Abr. Ed., 284, n.17 (1940). *Black’s Law Dictionary*, 4th Ed. (rev. 1968). (Note that a mortgage by one joint tenant effects a conditional severance subject to the right of redemption. *Schaefer v. Peoples Heritage Savings Bank*, 669 A.2d 185 (1996)).

A. When a joint tenant releases her estate to her cotenant “words of inheritance were never required, since the releasee is already seized and the release is merely a discharge from the claim of another seized under the same title.” *Tiffany*, 660, n.37. By extension of this principle a conveyance from a joint tenant to all other joint co-tenants merely extinguishes the grantor’s right of survivorship, passing no title, the entire interest in the property remaining in the surviving joint tenant(s) and no longer subject to the grantor’s survivorship interest. See also, *Creteau*, 85-89; *Powell*, *American Law of Property*, §6.1; *Moynihan*, *Introduction to the Law of Real Property*, 221 (1962).

B. The first sentence of Recommendation B has been the longstanding generally accepted interpretation of the effect of a severance of joint tenancy by conveyance. *Creteau*, 88; *Powell*, §6.1; *Moynihan*, 221 (1962).

C. The first sentence of Recommendation C dates to the 1961 original Title Standard No. 50. The following dictum appears in the *Palmer* decision: “Any joint tenant may convey his interest and a conveyance to a stranger destroys the unity of title, and also the unity of time, and the grantee becomes a tenant in common with the other cotenant. If there are more than two joint tenants and one conveys his interest to a third person, the grantee becomes a tenant in common with the others although the others remain joint tenants as between themselves.” (Quoting *Tiffany*), 156 Me. 103 at 112, 161 A.2d 837 at 842 (1960).

D. Prior to the 2011 amendments to 33 M.R.S. §159 there was no statutory guidance on the severance of joint tenancy. At common law a conveyance to oneself was nugatory failing to convey any interest to self such that a grantor attempting to convey to self and another continued to hold under her own title, thus the transfer lacked the unities of time and title and a tenancy in common was created. *Strout*, 144 Me. 263 at 269, 68 A.2d 241 at 247 (1949). (See Title Standard No. 408.) Under the (2011) last sentence of the first paragraph, §159 voids the nugatory rule and effectuates transfer of an interest to self in any context; and, the (2011) third paragraph of §159 effectuates the transfer of an interest to self in addition to any other named grantee whether intended to sever a joint tenancy or to create a tenancy in common.