



Patti Goroski

Transferring Property Owned in a Joint Tenancy or in a Life Estate without Probate

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WHEN A MONTANA RESIDENT DIES OWNING REAL PROPERTY titled as a joint tenant with right of survivorship or when the real property is subject to a life estate, probate is NOT necessary to transfer the deceased owner's interest to beneficiaries. Probate is the judicial process that includes the Personal Representative (PR) gathering information about all the real personal property¹ of someone who died. The PR pays all debts and taxes and then distributes the balance to the *devises* (beneficiaries) named in the Will.

Although ownership of real property in a joint tenancy or life estate transfers automatically, Montana law provides a legal procedure to update the public record to show the new owner. This document is recorded with the clerk and recorder in the county where the real property is located. Websites for downloading the forms are on pages 2 and 3.

- If the deceased person owned an interest in real property as a joint tenant with the right of survivorship with others, the ownership interest automatically ceases upon death and passes to the surviving joint tenant or joint tenants.
- If the deceased person was a life tenant (meaning the real property was in a life estate), the life estate automatically ends upon the death of the life tenant. The real property then passes to the remainderman. Remainderman is a legal term for a person who is entitled to receive real property at the death of the life tenant.

Why remove the deceased's joint tenant's name from the title when there is a surviving joint tenant or surviving joint tenants?

The removal of the deceased's name clears the title so the real property can be sold by the heirs after the death of the final joint tenant and title insurance issued to new owners. The new owner then can control the distribution of the real property

to their beneficiaries by writing a Will. If the owners do not write a Will the property passes under Montana intestate statutes which are summarized here: store.msuextension.org/Products/Dying-Without-a-Will-in-Montana-MT198908HR-MT198908HR.aspx.

Example: A western Montana woman shared what happened after her parents died with real property held in joint tenancy with right of survivorship. The adult children realized that after their mother died, the real property automatically passed to their dad, so they saw no reason to remove their mother's name from the joint tenancy title.

Five years after the passing of his wife, the father moved to another state. After he died, the family spent \$5,000 in legal fees to prove their joint tenant Mother was the first to die in Montana, while their father died second in Tennessee. The attorney's fee was a shock to the adult children and the legal process in both states took months to complete.

If multiple owners own real property, how do we know if it's titled as a joint tenant with right of survivorship or a tenant in common?

Joint tenancy with right of survivorship is a form of co-ownership in which two or more people own the same real property. A joint tenancy in real property can be held between married couples, siblings, parents and children, or persons who are not related.

The typical wording used to create a joint tenancy in real property is "*John Jones and Mary Jones as joint tenants with right of survivorship and not as tenants in common.*" The word "or" between the owners' names is typically not used on a title or deed for real property.

¹**Personal Property** includes titled properties such as checking and savings accounts, certificates of deposit, stocks, bonds, mutual funds, vehicles, and vessels.

Tenants or tenancy in common is another way multiple owners can title property. If the deed or title is worded as “John Jones and Mary Jones,” with no mention of a joint tenancy, Montana law defines the ownership of the real property as tenants in common. When two or more persons co-own real property as tenants in common, there is no automatic right of survivorship for the surviving tenant in common to receive the deceased co-owner’s share. The deceased’s interest must pass through probate to determine the heirs. If the person died with a written Will, probate is held to determine the devisees (*beneficiaries*) named in a Will.

If there is no Will or if the court determines the Will is invalid, the personal representative distributes the real property to the priority *heirs* listed in the intestacy statutes. MSU Extension has two educational resources describing who receives a deceased’s real and personal property under Montana intestacy statutes.

1. A MSU Extension MontGuide, *Dying Without a Will in Montana* (MT198908HR): store.msueextension.org/Products/Dying-Without-a-Will-in-Montana-MT198908HR__MT198908HR.aspx.
2. An interactive website with illustrations showing who receives real and personal property when a Montanan passes away without a written Will: montana.edu/dyingwithoutawill.

When real property is owned in joint tenancy with right of survivorship, it passes automatically to the surviving joint tenant upon death of one of the joint tenants. Even if the deceased has written a Will naming someone other than the surviving joint tenant to receive the real property, the real property automatically transfers by Montana law to the surviving joint tenant.

Example: Donna and Jim own their home with two acres of land as “Donna Chambers and Jim Chambers as joint tenants with right of survivorship and not as tenants in common.” After six years of marriage, Jim wrote a Will leaving the same real property to his son from a prior marriage.

After Jim passed away, Jim’s son did not receive the home with the two acres of land. Donna automatically became the owner because the house and land were titled in joint tenancy with right of survivorship between Donna and Jim. Jim’s Will leaving the home and land to his son did not override the joint tenancy contract.

Transferring real property owned as joint tenants with right of survivorship to the surviving joint tenant

Although real property held as joint tenants with right of survivorship passes automatically to the surviving joint tenant or tenants without a probate process in district court, the Montana legislature has provided a way for the public records to reflect the transfer from the deceased joint tenant to the surviving joint tenant. The surviving joint tenant or tenants can file a document with the clerk and recorder in the county where the real property is located. The surviving joint tenant should provide the following information in the document:

1. A statement that one holder of the joint tenancy interest is deceased.
2. The date of the joint tenant’s death.
3. A statement of the deceased holder’s interest in the real property ends.
4. A legal description of the real property held by the deceased person and surviving joint tenant or tenants.

An example document, Acknowledged Statement to Terminate a Joint Tenancy, is available at the Senior and Long-Term Care Division, Department of Public Health, and Human Services (DPHHS) website: <https://dphhs.mt.gov/sltc/aging/legalservicesdeveloper/forms>.

The Acknowledged Statement to Terminate a Joint Tenancy must be signed and acknowledged before a notary public before the document will be accepted by the clerk and recorder in the county where the real property is located. The recording fee for the Acknowledged Statement is \$8 per page (2024) if it meets the legislative standard format. The form is available to download at: montana.edu/estateplanning/affadavittoterminejointtenancyform.pdf.

The surviving joint owner must also present a completed Montana Realty Transfer Certificate to the clerk and recorder, along with a certified copy of the death certificate. This confidential tax document is required by the Department of Revenue for any party transferring real property to another party. The Realty Transfer Certificate form is available at any Montana county clerk and recorder’s office or online at mtrevenue.gov/publications/realty-transfer-certificate-form-rtc.

Montana Law also requires a Water Right Disclosure from the surviving joint tenant(s). The Department of Natural Resources and Conservation (DNRC) is in the process of changing the water rights permit. The application process is being implemented through the adoption, amendment, and

repeal of administrative rules. For information about key changes to the permit and change process under HB114 go to leg.mt.gov/bills/2023/billhtml/HB0114.htm.

After the Acknowledged Statement to Terminate a Joint Tenancy is recorded, title to the real property appears in the name of the surviving joint tenant. Future real estate tax bills from the county treasurer's office will be sent to the surviving joint tenant who holds title to the real property.

Real property subject to a life estate

A life estate allows one or more persons (life tenants) to have possession, use, and income from real property (typically land, a home, or buildings on the land) for the duration of a person's life. After the death of the life tenant, their interest in the real property ends.

An individual who receives the ownership rights of real property upon the death of the life tenant is called the remainderman. The life estate interest transfers to the remainderman as an "operation of law" without the necessity of probate.

Example: Jane had a home titled in her name only. In her written Will, Jane left the home to her husband, Jack, for his life, and then at his death to Susan, her daughter from a prior marriage. Jack is not the owner of the home; he is only the life tenant. Jack cannot sell, gift, or leave the home to someone else in his Will. As the life tenant, Jack is responsible for paying real estate property taxes, insurance premiums, and needed repairs on the home.

Susan is termed the remainderman because she receives the house upon the death of her stepfather. After Jack's death, Susan pays real estate property taxes, insurance premiums, and needed repairs on the home because she is now the new owner.

If a life tenant writes a Will naming someone other than the remainderman as devisee (*beneficiary*) of the real property, the provision in the Will is disregarded. The real property interest transfers by law from the life tenant to the remainderman without the necessity of probate.

Example: Rob has a life estate on ranch land left to him by his father. Rob's son, Doug, is the remainderman. Rob wrote a handwritten Will leaving the land to his wife. The Will is ineffective for passing on the real property to his wife because the ranch land is in a life estate (with Rob as a life tenant and his son, Doug, as the remainderman). Rob's son, Doug, receives the ranch land upon the death of his father, not Rob's wife.

Transferring real property from a life estate to the remainderman

The Montana legislature has provided a way to update the public record ownership of real property on the death of a life tenant without probate. The remainderman can file a document showing the life tenant is deceased and the identity of the remainderman. The following information is included:

1. A statement that the holder of the life estate interest has died.
2. Date of the life tenant's death.
3. A statement of the life tenant's interest in the real property ends.
4. A legal description of the real property held in a life estate.

An example document, Acknowledged Statement of Termination of a Life Estate form is available at the Montana Legal Services website: montana.edu/estateplanning/acknowledgementofremaindermentoterminatelifestate.html.

The Acknowledged Statement of Termination of a Life Estate must be signed before a notary public before the document will be accepted by the clerk and recorder in the county where the real property is located. The remainderman must also present a completed Montana Realty Transfer Certificate to the clerk and recorder. The form is available at any Montana county clerk and recorder's office or at: mtrevenue.gov/publications/realty-transfer-certificate-form-rtc/.

Montana Law also requires a Water Right Disclosure from the life tenant. The Department of Natural Resources and Conservation (DNRC) is in the process of changing the water rights permit. The application process is being implemented through the adoption, amendment, and repeal of administrative rules. For information about key changes to the permit and change process under HB114 go to leg.mt.gov/bills/2023/billhtml/HB0114.htm.

After you have recorded the Acknowledged Statement of the Termination of a Life Estate, the public record is updated to reflect that title to the real property appears in the name of the remainderman. Future real estate property tax bills will be sent by the county treasurer's office to the remainderman who now holds title to the real property.

Benefits of removing the name of a deceased joint tenant and life tenant

The importance of transferring ownership of real property held as joint tenants with right of survivorship or in a life estate is often overlooked until the current owner (very often

the surviving spouse or beneficiaries of the surviving joint tenant or life tenant) decides to sell or use the real property as collateral for a loan. At that point they may face a time-consuming process of proving one or all joint tenants or the life tenant is deceased. Real estate closings can be delayed while beneficiaries contact the appropriate officials to provide proof of the death of the joint tenant or life tenants.

Summary

The Montana legislature has provided a way for survivors of a joint tenancy or a life estate to update the public record of ownership outside the probate process. By filing the proper documents with the clerk and recorder's office in the county where the land is located, the legal record shows the real property and water rights are owned by the survivor(s) who now hold title to the real property and are responsible for taxes. The new owners can contact an attorney to have a Will written to distribute their real property upon death.

Acknowledgement

This MontGuide has been reviewed by members of the following:

- Business, Estates, Trusts, Tax and Real Property Section: State Bar of Montana
- Montana Association of Clerk and Recorders

Further information

You can find additional MSU Extension Estate Planning information and MontGuides at montana.edu/estateplanning/eppublications.html or request copies from your local MSU Extension office. montana.edu/extension/localoffices.html.

Disclaimer

This publication is not intended to be a substitute for legal advice. Rather, it is designed to help families become better acquainted with how a joint tenancy with right of survivorship and a life estate can be passed to new owners without probate. Future changes in laws cannot be predicted, and statements in this MontGuide are based solely upon those laws in force on the date of publication.



MT201606HR, REVISED 07/24
**FAMILY FINANCIAL MANAGEMENT
(ESTATE PLANNING)**

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