

## Ask the Probate Judge—Busting a Joint Tenancy

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**Q: I am a joint tenant on property with my father who is getting very old. He wants to give his half of the property to my sister using a quitclaim deed. Since I have been paying the mortgage all along to give him a place to live, I don't like this idea. He wants to help out my sister who has never owned a home, but I think this sets me up for a problem. Is it legal to use a quitclaim deed to transfer your right as a joint tenant? J.W.**

Your question is interesting and complex. While I am not allowed to give legal advice on specific cases, I can tell you generally what the law allows.

Joint tenancy is a form of title in which an undivided interest with the right of survivorship belongs equally to all joint tenants. Joint tenants take title at the same time, by the same instrument, with equal interests, and equal rights of possession.

When one joint tenant dies, the surviving joint tenant automatically receives title without a court proceeding. A decedent's will does not affect joint tenancy property.

Your question reminds me of a talk I once gave. During the question and answer session, a man told a story about adding his daughter as a joint tenant to the deed of his home. In that instance, the daughter had not contributed to the purchase of the home.

Now that the man was older, he wanted to sell the home and move into an assisted living facility. The daughter refused to sign the deed transferring the home to the new owner. Without the consent of both joint tenants, the home could not be sold.

A local attorney who attended the talk suggested that a court proceeding might be necessary. The man could bring a partition lawsuit to force a sale of the property if his daughter refused to sell. So in this example, one could not *remove* a name or transfer full ownership without the consent of the other joint tenant.

Your question presents somewhat different facts. My research indicates that one joint tenant can convey an interest to a third party without the other joint tenant's approval. This conveyance would sever the joint tenancy and create a tenancy in common. Even the U.S. Supreme Court has addressed this issue, stating that, "In order for one [joint] tenant to alienate his or her individual interest in the [joint] tenancy, the estate must first be severed—that is, converted to a tenancy in common with each tenant possessing an equal fractional share."

Tenancy in common is a different way for two or more people to own property. Unlike joint tenancy, each tenant in common can give his or her interest upon death to whomever he or she wishes, which might or might not be the other tenants in common.

If your father signs a quitclaim deed to your sister, this deed will transfer whatever interest he has in the house. You and your sister would then own the house as tenants in common and could each leave your share to whomever you wished. A quitclaim deed makes no warranties as to the title, but simply transfers to the buyer or recipient whatever interest the grantor has.

I do not know if the mortgage was issued in both your name and your father's name or only your name. However, if your father conveys his interest to your sister, the original borrowers on the mortgage would still be responsible for the payments. Unless a

new mortgage were issued with your sister's name, she would not be legally responsible for paying the mortgage.

While it may be "legal" to use a quitclaim deed to transfer one's interest in a joint tenancy, such an action can create problems and litigation as to what share each actually owns (depending on who paid what amounts on the mortgage). You and your father should consult a knowledgeable attorney about your rights, responsibilities, tax consequences, and options before acting.

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