

## EXAMINERS' ANALYSIS OF QUESTION NO. 12

### **Sunnyville Condo - Tenancy by the Entirety**

In Michigan, there is a common-law presumption that a tenancy by the entirety is created when a validly married couple takes property as joint tenants and share the unities of time, title, interest, and possession. *Budwit v Herr*, 339 Mich 265, 272 (1954).

In a tenancy by the entirety, each spouse is considered to own the whole and, therefore, is entitled to the enjoyment of the entirety and to survivorship. *Rogers v Rogers*, 136 Mich App 125, 134 (1984).

When real property is so held as tenants by the entireties, neither spouse acting alone can alienate or encumber to a third person an interest in the fee of lands so held. Neither the husband nor the wife has an individual, separate interest in entireties property, and neither has an interest in such property which may be conveyed, encumbered or alienated without the consent of the other. *Rogers*, 136 Mich App at 134.

Here, with respect to the Sunnyville property, the deed to Nancy and Drew indicated only that the property was conveyed to them "jointly as husband and wife." Therefore, Nancy and Drew clearly acquired a tenancy by the entirety with respect to the Sunnyville property.

Nancy and Drew's divorce was not final when Drew died. Therefore, the tenancy by the entirety was not dissolved by divorce. However, the tenancy by the entirety did terminate when Drew died. At that time, Nancy took sole title to the property through the right of survivorship. This right provides that in the event that one spouse dies during the course of the marriage, the surviving spouse automatically takes fee simple ownership in the entire property.

The quitclaim deed to Jen did not divest Nancy of her ownership interest. As a tenant by the entirety, Drew did not have a separate or individual property interest that he could lawfully transfer to Jen without Nancy's consent. *Rogers*, 136 Mich App at 134-135. A quitclaim deed only passes "the estate which the grantor

could lawfully convey by a deed of bargain and sale." MCL 565.3. As Drew could not lawfully transfer his interest in the tenancy by the entirety, the quitclaim deed transferred no property interest to Jen. Nancy has the sole ownership interest in the condo and can evict Jen pursuant to applicable law.

### **Fixitville Property - Joint Tenants with Rights of Survivorship**

Michigan law recognizes two forms of joint tenancies: a more standard form of joint tenancy and joint tenancy with rights of survivorship.

The first is of the type typically recognized in various jurisdictions. This joint tenancy is characterized by the four unities, that is, unity of interest, unity of title, unity of time, and unity of possession. Each joint tenant shares in possession of the entire estate, and each is entitled to an undivided share of the whole. The principal characteristic of the joint tenancy is the right of survivorship. Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate. In the standard joint tenancy, the right of survivorship may be destroyed by severance of the joint tenancy. . . . The joint tenancy may be severed by an act of the parties, by conveyance by either party, or by levy and sale on an execution against one of the parties. . . . If one joint tenant conveys his interest to a third party, then the remaining joint tenant and the grantee become tenants in common, thus destroying the element of survivorship.

The . . . [second form of joint tenancy], while unfortunately sharing the same appellation as the typical joint tenancy, is an interest of a different nature. It is created by express words of survivorship in the granting instrument in addition to those creating a joint tenancy, such as "and to the survivor of them," "to them and the survivor of them," "or survivor of them," "with right of survivorship," "with full rights of survivorship." *Albro v Allen*, 434 Mich 271, 274-275 (1990) (citations omitted).

A "joint tenancy with full rights of survivorship is . . . composed of a joint life estate with dual contingent remainders."

*Wengel v Wengel*, 270 Mich App 86, 94-95 (2006) (citations omitted) (citing *Albro*, 434 Mich at 275). "While the survivorship feature of the ordinary joint tenancy may be defeated by the act of a cotenant, the dual contingent remainders of the joint tenancy with full rights of survivorship are indestructible." *Id.* (citing *Albro*, 434 Mich at 275-276). Thus, where property stands in the name of joint tenants with the right of survivorship, the "contingent remainder of a cotenant is not subject to being destroyed by the actions of the other cotenant." *Id.* Or said another way, "survivorship rights cannot be destroyed where the grant is to joint tenants with right of survivorship . . . ." *Townsend v Chase Manhattan Mortg Corp*, 254 Mich App 133, 136 (citing *Albro*, 434 Mich at 287).

With respect to the Fixitville property, the deed to Nancy, Drew and Steve indicated that they acquired the property as "joint tenants with rights of survivorship." As such, Drew was only permitted to transfer his concurrent life estate interest (which terminated when Drew died) but could not transfer his interest in any contingent remainder, thus cannot deprive Nancy or Steve of their right of survivorship. The right of survivorship provides that in the event that any tenant dies, the surviving tenant or tenants automatically takes the whole estate in fee. Since both Drew and Steve died, Nancy automatically took sole ownership of the Fixitville property in fee. Thus, the quitclaim deed to Jen did not transfer fee simple ownership interest to the Fixitville property to Jen.

### **Mannsville Property - Joint Tenants**

The facts state that the Mannsville property was deeded to Nancy, Drew and Steve as "joint tenants," without mention of the right of survivorship. As such, Nancy, Drew and Steve were standard form joint tenants. As standard form joint tenants, their rights of survivorship with respect to the Mannsville property was subject to severance, including by conveyance, which could destroy the element of survivorship and convert the joint tenants to tenants in common. *Albro*, 434 Mich at 274-275. Upon the conveyance by Drew to Jen of the Mannsville property, the joint tenancy status of the owners was severed and the remaining owners (Nancy and Steve) became tenants in common with Jen. A tenant in common has the right to compel partition. *Albro*, 434 Mich at 282. As such, Jen has the right to compel partition of the Mannsville property.