

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 08-1248

BY REPRESENTATIVE(S) Kerr J., Fischer, Marshall, Ferrandino, Frangas, Green, Massey, Merrifield, Todd, and Garza-Hicks; also SENATOR(S) Veiga.

CONCERNING JOINT TENANCY IN REAL PROPERTY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-31-101, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

38-31-101. Joint tenancy expressed in instrument - when.
(1.5) (a) THE DOCTRINE OF THE FOUR UNITIES OF TIME, TITLE, INTEREST, AND POSSESSION IS CONTINUED AS PART OF THE LAW OF THIS STATE SUBJECT TO SUBSECTIONS (1), (3), (4), (5), (6), AND (7) OF THIS SECTION AND PARAGRAPH (b) OF THIS SUBSECTION (1.5).

(b) SUBSECTIONS (1), (3), (4), (5), (6), AND (7) OF THIS SECTION ARE INTENDED AND SHALL BE CONSTRUED TO CLARIFY, SUPPLEMENT, AND, LIMITED TO THEIR EXPRESS TERMS, MODIFY THE DOCTRINE OF THE FOUR UNITIES.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) FOR PURPOSES OF THIS SUBSECTION (1.5), THE "DOCTRINE OF THE FOUR UNITIES OF TIME, TITLE, INTEREST, AND POSSESSION" MEANS THE COMMON LAW DOCTRINE THAT A JOINT TENANCY IS CREATED BY CONVEYANCE OR DEVISE OF REAL PROPERTY TO TWO OR MORE PERSONS AT THE SAME TIME OF THE SAME TITLE TO THE SAME INTEREST WITH THE SAME RIGHT OF POSSESSION AND INCLUDES THE RIGHT OF SURVIVORSHIP.

(5) (a) EXCEPT AS PROVIDED IN SECTIONS 38-35-118 AND 38-41-202 (4), A JOINT TENANT MAY SEVER THE JOINT TENANCY BETWEEN HIMSELF OR HERSELF AND ALL REMAINING JOINT TENANTS BY UNILATERALLY EXECUTING AND RECORDING AN INSTRUMENT CONVEYING HIS OR HER INTEREST IN REAL PROPERTY TO HIMSELF OR HERSELF AS A TENANT IN COMMON. THE JOINT TENANCY SHALL BE SEVERED UPON RECORDING SUCH INSTRUMENT. IF THERE ARE TWO OR MORE REMAINING JOINT TENANTS, THEY SHALL CONTINUE TO BE JOINT TENANTS AS AMONG THEMSELVES.

(b) FILING A PETITION IN BANKRUPTCY BY A JOINT TENANT SHALL NOT SEVER A JOINT TENANCY.

(6) (a) THE INTERESTS IN A JOINT TENANCY MAY BE EQUAL OR UNEQUAL. THE INTERESTS IN A JOINT TENANCY ARE PRESUMED TO BE EQUAL AND SUCH PRESUMPTION IS:

(I) CONCLUSIVE AS TO ALL PERSONS WHO OBTAIN AN INTEREST IN PROPERTY HELD IN JOINT TENANCY WHEN SUCH PERSONS ARE WITHOUT NOTICE OF UNEQUAL INTERESTS AND HAVE RELIED ON AN INSTRUMENT RECORDED PURSUANT TO SECTION 38-35-109; AND

(II) REBUTTABLE FOR ALL OTHER PERSONS.

(b) THIS SUBSECTION (6) DOES NOT BAR CLAIMS FOR EQUITABLE RELIEF AS AMONG JOINT TENANTS, INCLUDING BUT NOT LIMITED TO PARTITION AND ACCOUNTING.

(c) UPON THE DEATH OF A JOINT TENANT, THE DECEASED JOINT TENANT'S INTEREST IS TERMINATED. IN THE CASE OF ONE SURVIVING JOINT TENANT, HIS OR HER INTEREST IN THE PROPERTY SHALL CONTINUE FREE OF THE DECEASED JOINT TENANT'S INTEREST. IN THE CASE OF TWO OR MORE SURVIVING JOINT TENANTS, THEIR INTERESTS SHALL CONTINUE IN PROPORTION TO THEIR RESPECTIVE INTERESTS AT THE TIME THE JOINT

TENANCY WAS CREATED.

(d) FOR PURPOSES OF THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5, C.R.S., A JOINT TENANCY SHALL BE DEEMED TO BE A JOINT TENANCY WITH EQUAL INTERESTS AMONG THE JOINT TENANTS REGARDLESS OF THE LANGUAGE IN THE DEED OR OTHER INSTRUMENT CREATING THE JOINT TENANCY.

(7) NOTHING IN THIS SECTION SHALL BE DEEMED TO ABROGATE ANY EXISTING CASE LAW TO THE EXTENT THAT SUCH CASE LAW ESTABLISHES OTHER MEANS OF SEVERING A JOINT TENANCY.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO