

Real Estate

## How joint property ownership rights work What happens when the property is sold depends on how it's jointly-owned

by Theresa Morley Nov 14, 2018



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**Q:** My common-law partner and I are joint tenants of a property we have sold which is about to close. (The joint tenancy was the result of winning the Princess Margaret early bird lottery house twelve years ago..) I have assumed that we would invest the sale money in a joint investment account we hold, with the right of survivorship on the death of one of us. His daughter tells me that “with the sale of the house your joint asset becomes liquid with each person entitled to a half share of the proceeds.” She has Power of Attorney (POA) Property for him and wishes to invest his share in his investment

account. Please confirm if the sale of jointly held property negates the joint ownership and right of survivorship.

—*Angela*

**A:** Thanks for your letter Angela. There are two ways to jointly own a property—joint tenancy and tenancy in common.

A joint tenancy is a legal construct under common law and means that each tenant owns an equal undivided share of the property. The joint tenancy is established for all the tenants at the same time and no owner has an exclusive right to all or part of the property. When one joint tenant dies the entire property belongs to the remaining tenant/s – generally called the right of survivorship or last man standing.

Tenants in common own an exclusive portion of the property; it can be a third, a half or some other portion.

In a joint tenancy, each tenant can account for their ownership as an equal share of the property on their balance sheet, but because they don't own an undivided share it is not included in their estate. This is a common ownership arrangement used for estate planning purposes. In a tenant in common arrangement, each tenant owns an exclusive share of the property and can leave their share to someone in their will or sell it. Therefore, their share of the property can also be included on their balance sheet and forms part of their estate.

On the sale of a property, any tenancy agreement attached to the property—whether it is a joint tenancy or tenants in common—falls away and the proceeds become the property of each of the tenants according to their share. So, your common-law partner's daughter is correct.

You mention that the daughter has a POA Property and that "...she wishes to invest his share in his investment account" It is my understanding that even

though his daughter has a POA Property, she is still required to carry out his wishes. So, it might be useful to examine the nature of her POA Property.

In Ontario, there are three types of Power of Attorney (POA). POAs are province specific and so if you live in another province, you will need to sign a POA for that province.

- A Continuing Power of Attorney for Property (CPOA) covers your financial affairs and allows the person you name to act for you even if you become mentally incapable. Once you create a CPOA Property, you can leave instructions or your wishes about how to manage your property in writing, or by telling your attorney, or by any other means of communication. If you give instructions or specific information about what you want and do not want, your attorney must follow your instructions and wishes for your property even if you become mentally incapable.
- A non-continuing Power of Attorney for Property covers your financial affairs but can't be used if you become mentally incapable. You might give this Power of Attorney, for example, if you need someone to look after your financial transactions while you're away from home for an extended period of time.
- A Power of Attorney for Personal Care (POAPC) covers your personal decisions, such as housing and health care.

In your case, a few questions about the nature of the POA Property would be helpful in providing direction to making the right decision. If the POA Property is a non-continuing POA, then she may not be in a position to make decisions regarding these funds. If it is a CPOA Property, then in spite of the fact that the sale of the property negates the joint tenancy and right of survivorship, his wishes as to what must be done with these funds must still be followed.

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