

Trusts and Joint Ownership

January 17, 2024

Take-Away: An irrevocable Trust cannot own real estate as a joint tenant with full rights of survivorship.

Background:: A couple of years ago the Michigan Court of Appeals, on remand from the Michigan Supreme Court, held that an irrevocable Trust could not own real estate as a joint tenant with full rights of survivorship. *Schaff v. Forbes*, Michigan Court of Appeals, No. 343630 (July 1, 2023.) In that decision the Court noted that a literal, physical death of a joint tenant was essential to the purpose of the statute that authorizes ‘joint tenants with full rights of survivorship.’ To reach its conclusion, the Court relied on MCL 565.48 which references the need for both a death certificate and some proof of death to confirm and to document the other joint tenant’s survivorship.

Joint Tenancy with Rights of Survivorship: A valid joint tenancy with full rights of survivorship has *four unities: Unity of time, unity of possession, unity of title, and unity of interest.* A unity of interest means that a cotenant has exactly the same right in his/her proportional interest as the other cotenants have in theirs. In other words, all interests are doctrinally equal; all cotenants have estates of the same type and duration. Thus, a settlor could not hold property jointly with a trustee where the interest is coupled with a right of survivorship, as most the duration of most ‘modern’ trusts is not tied to the trustee’s lifespan.

Another recent court decision, from Iowa, confirms this conclusion.

Iowa Decision: In *Grout as Trustee of Helen Schardein 2018 Revocable Trust*, 985 N.W. 2d 144, (Iowa, 2023) an elderly settlor transferred all her real and personal property to the trustee of her revocable Trust, which included a parcel of real estate that the settlor had owned jointly with rights of survivorship ‘with a man who...[had been]... providing various services for her.’ On the settlor’s death the parcel was sold by the trustee.

- Dispute: The man claimed that he was entitled by right of survivorship to all the sales proceeds resulting from the sale of the parcel. The trustee rejected that claim to the sale proceeds.
- Decision: The Court held that considering the conveyance by the settlor to the trustee 'it makes no sense to suggest that the Trust could now own a property as joint tenant with rights of survivorship. The Trust is not a natural person and doesn't die.' The transfer by the settlor of her interest in the joint tenancy with rights of survivorship was held to have effect at the time of transfer a termination of the joint tenancy and an equal partitioning of the subject real estate.

Conclusion: While this conclusion seems pretty logical when there is reference to joint tenants with full rights of *survivorship*, it should be noted that in the Michigan case, the Court of Appeals initially held that the irrevocable trust could own real estate as a joint tenant with full rights of survivorship. It took a remand from the Michigan Supreme Court to force the Court of Appeals panel to conclude that, unlike other joint tenancies with survivorship implications, an irrevocable Trust does not die and has no 'life expectancy.' It should also be noted that the transfer of an asset that is held as 'joint tenants with full rights of survivorship' used to fund a revocable trust will have the legal effect of severing that title, transforming the owners' respective interests to tenants in common.