

1. What is joint ownership ?

Joint ownership is a situation where two or more persons co-owns or jointly owns any property. Joint ownership comes in three forms Joint Tenancy, Tenancy in common and Tenancy by Entirety.

2. Types of joint ownership :

a. Joint Tenancy

Each Joint Tenant owns the whole of the property jointly with the other owner or owners. No party has a specific share in the property while joint tenancy continues. This means that the Joint Tenants must have equal interests in the property, and are entitled equally to its rents and profits.

In order for a joint tenancy to exist, four conditions must be fulfilled:

- All tenants acquired the property at the same time
- All tenants have an equal interest in the property
- All tenants acquired title by the same deed or will
- All tenants have an equal right to possession

If any one of the four conditions has not been met, or if it is unclear whether a joint tenancy has been formed, most courts will presume that the more favored tenancy in common has been formed.

A joint tenancy ends when either:

- the whole property is transferred to one owner
- the tenancy is converted into a tenancy in common, whether voluntarily or involuntarily, for example if one of the owners becomes bankrupt
- the property is sold to someone else, or
- one owner outlives all the others.

The principle of 'survivorship' applies. On death of one Joint Tenant, the surviving Joint Tenant or tenants acquire the whole property automatically by operation of law. It follows that property held in joint tenancy does not form part of the estate of the tenant who dies. So a Joint Tenant cannot in her or his will deal with property held in joint tenancy.

Joint tenancy often works well when married couples acquire real estate, vehicles, bank accounts, securities, or other valuable property together.

b. Tenancy in common

This is a form of co- ownership in which the property is held in common with others but where, in contrast with Joint Tenants, the share of a deceased Tenant in Common forms part of the deceased's estate and passes to his or her beneficiaries under his or her Will or certain prescribed persons as per succession laws. You can also give away, sell or mortgage your share.

A tenancy in common ends when either:

- you all sell the property (with all the shares) to someone else
- you all convert to a beneficial joint tenancy, or
- one owner acquires all the shares in the property.

A tenancy in common interest can be transferred at any time during the holder's life, or it can be devised after their death. Tenancy in common is the most favored form of joint possession. Most courts presume that any devise to two or more unmarried persons creates a tenancy in common.

c. Tenancy by the Entirety

Tenancy by the entirety is joint ownership of property by a husband and wife who are treated as a single entity. Both husband and wife are able to possess and use all of the property. If one spouse dies, the other inherits the whole property. Neither husband nor wife is able to sell any part of the property without the other’s consent.

The creation of a tenancy by the entirety is much like the creation of joint tenancy plus marriage. In order to form a tenancy by the entirety, five conditions must be met:

- Requires marriage
- Husband and wife must acquire the property at the same time
- Husband and wife must acquire title by the same will or deed
- Husband and wife must have identical interests in the property
- Husband and wife must have an equal right to possession

If any one of these conditions is missing, most courts will presume that the more favored tenancy in common is formed.

Tenancy by the Entirety comes to an end either:

- Upon Divorce as the condition of marriage no longer exists
- The property can be sold or gifted to someone else
- By express or implied agreement, such tenancy can be terminated
- Upon death of any one spouse.

3. How to determine joint ownership?

You can check the type of ownership title as per the kind property in the following documents as under:

Kind Of property	Documents to look into for ownership title
Real estate	Your agreement or deed
Bank accounts	The passbook or the registration card file at the bank
Mutual Funds	A statement for the account
Brokerage Account	A statement for the account
Individual stocks or bonds	Stock certificates or bonds
Car or other vehicle	Certificate of ownership (title) or registration slip

4. Vesting of property on death of co-owner :

If land, flat, mutual funds, shares or bank account or bank lockers are in joint name and one of the person dies, whether joint holder becomes owner automatically of 100% or if person had made Will had bequeathed his 50% to some other person – who will be owner of 50% share of person died – joint owner or person named in Will?

A. Real estate Property :

- i. When two or more people buy a property but do not specifically mention the share that each has in the property, a 'tenancy-in-common' is said to exist. All the co-owners can use the entire property and every co-owner is deemed to be having an equal share in the property.
- ii. Upon death of one of the co-owners, the interest in the property does not pass to the other co-owners but to the person named in the will of the deceased or to the legal heirs of the deceased co-owners as per the Succession Law, who will then become a tenant-in-common with the surviving co-owners.

B. Mutual Funds :

- i. The goal of having a joint holder in mutual funds is that in the event of the primary holder passing away, the joint holder can establish ownership of the fund units after submitting a death certificate.
- ii. If the first holder dies, units can then be transferred to the surviving joint holders or to the nominee.
- iii. In the case of demise of one of the joint holders (other than the first one), the investment will continue to remain in the name of the first unit holder. He will have the option to register any other person as a joint holder.
- iv. The share of the deceased holder will pass on to the legal heirs of the deceased as per the Succession Laws, if there is no Will.

C. Shares :

- i. In case of joint shareholding, the surviving joint holders have to intimate the company upon the death of any of the joint shareholders and submit the attested copy of the death certificate. The company will verify the facts and take cognizance of the death and delete the name of the deceased member from register of members. Consequently, the remaining shareholders will be recognized the registered holders.
- ii. In case of death of one of the joint shareholder the shares of the deceased will pass on to the legal heirs according to the succession laws if their no Will.

D. Bank accounts:

- i. In the event of death of one of the joint account holder and in the absence of Nomination or repayment clause, the balance amount in the joint account will be paid to the surviving account holders along with the legal heirs of the deceased account holder.

- ii. Banks follow the mandate signed by the primary account holder in a joint account. If the 'either or survivor' mode is chosen, on death of any one of the account holders, the surviving one alone can operate. He/she will be entitled to the balance in the account. The legal heirs of the deceased account holder cannot make any claim against the bank until the death of the surviving account holder. The bank would stop the survivor from operating the account, only if the legal heir produces a court order that restrains the bank to do so.
- iii. The mode of operation for a joint account has to be specified at the time of opening the account and cannot be changed without a written consent of all joint account holders.
- iv. The joint accounts are governed by instructions and mandate given in respect to operating the bank account. If the mandate is either or survivor (as is the usual case) then the legal heirs of the deceased account holder would also be entitled to claim in respect to the said account jointly with the survivor. However a banker can transfer the account in single name of the survivor and allow him to withdraw the amount individual. Banker need not inquire if the survivor is entitled to the said account or not.
- v. The account holder or all joint account holders should nominate a person to whom, in the event of the death of the sole or all account holders, the amount of deposit may be returned by the bank. The nominee holds the money received in trust for the legal heir of the deceased account holder.

1. Can Joint properties be included in Will and to what extent?

Yes, a person owning a joint property is allowed to mention his part of joint property in his/ her Will. It is necessary to mention about joint property titles and the proportion of your share in the joint property in order to avoid any dispute after the death of the person between the co-owner and the legal heirs of the deceased.

2. Can Joint properties of HUF and Partnership firm be bequeathed through a Will?

A coparcener is entitled to bequeath his share in a joint Hindu family property by a will. or intestate succession. A Karta can also bequeath only his share in the joint Hindu family property and not the entire property of the HUF, as the entire property doesn't belong to him and he is entitled to only a particular share in the said property. In the event that he does not execute any will, the property will devolve as per the rules of intestate succession applicable to Hindus under the Hindu Succession Act, 1956.

For share in partnership firm as a partner is allowed to be bequeathed subject to conditions, if any, in a Partnership deed.

The right of succession prevails over Nominee and Joint Account Holder. It was also observed by courts that if there is no intention on the part of deceased account holder to make the survivor owner than the amount will be restored by the heirs and legal representative of the deceased account holder.