

**"CHAPTER 509
CONVEYANCES TO TWO OR MORE**

Section

- 509-1 Construed as estates in common, when
- 509-2 Creation of joint tenancy, tenancy by the entirety,
and tenancy in common
- 509-3 Tenancy by the entirety when owners change
relationship status

Law Journals and Reviews

Summary of the Law on Tenancies. 2 HBJ, Jul 1964, at 12.

" **§509-1 Construed as estates in common, when.** All grants, conveyances, and devises of land, or of any interest therein, made to two or more persons, shall be construed to create estates in common and not in joint tenancy or by entirety, unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy or by entirety; provided that this section shall not apply to grants, conveyances, or devises to personal representatives or trustees. [L 1903, c 19; RL 1925, §3190; RL 1935, §5180; RL 1945, §12780; RL 1955, §345-1; HRS §509-1; am L 1976, c 200, pt of §1]

Cross References

Married persons, see §§572-21, 25.

Case Notes

Assuming there could be estate by entirety in personalty, nevertheless stock held by husband and wife "as joint tenants with right of survivorship" not held by entirety. 95 F. Supp. 684, 691.

Prior to statute, conveyance to two or more construed as tenancy in common; common law rule rejected. 5 H. 543.

Two or more persons acquiring title by adverse possession take as tenants in common in absence of agreement to the contrary. 31 H. 661, citing as contrary and in effect overruling 5 H. 491.

Statute does not apply to will which took effect before its enactment. 23 H. 747, 754, aff'd 255 Fed. 732.

In case of doubt, grantees take as tenants in common. 24 H. 341, 345; 37 H. 234, 241. But if intention to create joint tenancy manifestly appears, estate in joint tenancy created. 24 H. 341.

There is a general fiduciary relationship between cotenants. 57 H. 195, 552 P.2d 1380.

An estate by the entirety is not subject to claims of creditors of one of the spouses. 57 H. 608, 561 P.2d 1291.

Right of survivorship of a joint tenant is subject to levy. 59 H. 277, 580 P.2d 843.

Personal property not affected by section. 59 H. 474, 583 P.2d 966.

Proceeds from sale of land held by the entirety are also property held by the entirety in absence of contrary intent. 59 H. 474, 583 P.2d 966.

" **§509-2 Creation of joint tenancy, tenancy by the entirety, and tenancy in common.** (a) Land, or any interest therein, or any other type of property or property rights or interests or interest therein, may be conveyed by a person to oneself and another or others as joint tenants, or by a person to oneself and one's spouse or reciprocal beneficiary, or by spouses to themselves, or by reciprocal beneficiaries to themselves, as tenants by the entirety, or by joint tenants to themselves and another or others as joint tenants, or tenants in common to themselves or to themselves and another or others as joint tenants, or by tenants by the entirety to themselves or themselves and another or others as joint tenants or as tenants in common, or by one tenant by the entirety to the tenant's spouse or reciprocal beneficiary of all of the tenant's interest or interests, without the necessity of conveying through a third party, and each such instrument shall be construed as validly creating a joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention.

(b) Conveyance of any real property located in the State and held by spouses or reciprocal beneficiaries as tenants by the entirety:

- (1) To a joint trust as tenant in severalty for their benefit and which is revocable and amendable by either or both during their joint lifetime; or
- (2) In equal shares as tenants in common to their respective separate trusts, each of which is revocable and amendable by the respective grantor, or any accumulation of such conveyed property,

shall have the same immunity from the claims of their separate creditors as would exist if the spouses or reciprocal beneficiaries had continued to hold the real property or its proceeds as tenants by the entirety.

(c) Subsection (b) shall apply as long as:

- (1) The spouses remain married or reciprocal beneficiaries remain in a registered reciprocal beneficiary relationship;
- (2) The real property continues to be held in the trust as provided under subsection (b);
- (3) Both spouses or reciprocal beneficiaries remain beneficiaries of the trust and no waiver as provided under subsection (g) has occurred;
- (4) The first and last name of the spouse or reciprocal beneficiary for their respective trusts, or the first and last names of both spouses or reciprocal

beneficiaries for a joint trust, are included in the name of the trust; and

- (5) Notice of the intention to continue to hold the real property or its proceeds as tenants by the entirety is provided by a deed of conveyance by the spouses or reciprocal beneficiaries and filed or recorded in land court or the bureau of conveyances, or both, as appropriate; provided that the notice shall specifically refer to this section and state that the real property to be held by the trust shall be immune from the claims of their separate creditors.

(d) After the death of the first of the spouses or reciprocal beneficiaries, all real property held in the trust that was immune from the claims of their separate creditors under subsection (b) immediately prior to the individual's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the spouses or reciprocal beneficiaries continued to hold the real property conveyed in trust or its proceeds as tenants by the entirety.

(e) In the event that any transfer of real property held in tenancy by the entirety to a trustee of a trust as provided under subsection (b) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses or reciprocal beneficiaries are living, then immediately upon the occurrence of either event, all real property held in the trust shall automatically be deemed to be held by both spouses or reciprocal beneficiaries as tenants by the entirety.

(f) Upon entry of a decree granting divorce or annulment between the spouses or the termination of the reciprocal beneficiary relationship, the immunity from the claims of separate creditors under subsection (b) shall immediately terminate and the real property shall be treated as held in tenancy in common.

(g) The immunity from the claims of separate creditors under subsections (b) and (d) may be waived as to any creditor or any specifically described trust property by:

- (1) The express provisions of a trust instrument; and
- (2) The written consent of both spouses or reciprocal beneficiaries.

(h) Except as provided otherwise herein, in any dispute relating to the immunity of trust property from the claims of a separate creditor of a spouse or reciprocal beneficiary, the spouses or reciprocal beneficiaries shall have the burden of proving the immunity of the trust property from the creditor's claims.

(i) After a conveyance of real property to a trust as provided under subsection (b), the real property transferred shall no longer be held by the spouses or reciprocal beneficiaries as tenants by the entirety and the disposition of the real property shall be controlled by the terms of the trust.

(j) For the purposes of this chapter "reciprocal beneficiary" means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated. [L 1941, c 167, §1; RL 1945, §12781; RL 1955, §345-2; am L 1957, c 237, §1; HRS §509-2; gen ch 1993; am L 1997, c 383, §10; am L 2012, c 209, §1]

Case Notes

An estate by the entirety is not subject to claims of creditors of one of the spouses. 57 H. 608, 561 P.2d 1291.

Right of survivorship of a joint tenant is subject to levy. 59 H. 277, 580 P.2d 843.

Section states no presumption in favor of tenancy in common. 59 H. 474, 583 P.2d 966.

Property management agreement neither conveyed property nor altered the tenancy by the entirety; purpose of section and relevant antecedent is to eliminate common law requisite of a "straw man" in creating a joint tenancy. 64 H. 236, 639 P.2d 400.

" **[§509-3] Tenancy by the entirety when owners change relationship status.** (a) When two individuals who hold property as tenants by the entirety enter into a different legal relationship with each other that also allows them to hold property as tenants by the entirety, their ownership as tenants by the entirety shall be continuous:

- (1) If the new legal relationship is entered into simultaneously with the termination of the earlier legal relationship; or
- (2) If the new legal relationship is entered into within ninety days after the termination of the earlier legal relationship; provided that no liens were perfected and attached on the property in the interim.

(b) The continuity of a tenancy by the entirety under this section shall apply to couples married under chapter 572, civil union partners under chapter 572B, and reciprocal beneficiaries under chapter 572C.

(c) Nothing in this section precludes any individuals from opting to hold their property in another manner as permitted under this chapter.

(d) Nothing in this section shall impact liens perfected and attached on the property after the earlier legal relationship was terminated and before January 1, 2012. [L 2012, c 267, §2]

Note

Section retroactive to January 1, 2012. L 2012, c 267, §20.

Revision Note

In subsection (d), "January 1, 2012" substituted for "the date this Act became law upon its approval". The approval date for Act 267 was July 6, 2012.