
**The
American
College of
Trust
and Estate
Counsel**

3415 South Sepulveda Blvd.
Suite 330
Los Angeles, CA 90034



The summary of each state's laws reflected in this study has been based on opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the studies) assume any responsibility for the accuracy of the information contained in any study.

Study 11:

**Real Property in Names
of Husband and Wife**

Compiled by

**Beverly R. Budin
Philadelphia, Pennsylvania**

REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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ALABAMA

Lyman F. Holland, Jr.
Mobile, Alabama
October 9, 1996

1. What type of tenancy is created thereby?	T/C	N/A	N/A	T/C	T/C ⁹ §35-4-7, Code 19
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	N/A	N/A	E	E
b. Income?	E ¹	N/A	N/A	E ¹	E ¹
c. Lease the property?	E ²	N/A	N/A	E ²	E ²
d. Partition the property?	E §§35-8-20 <i>et seq.</i> ,	N/A 35-8-40 <i>et seq.</i> ,	N/A 35-8-80 <i>et seq.</i> ,	E ³² 35-6-100 <i>et. seq.</i> ,	E Code 1975
3. What disposition is made of the property on one spouse's death?	X	N/A	N/A	X ³²	X ⁹
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	N/A	N/A	NC	NC

ALASKA

C.L. Cloudy
Ketchikan, Alaska
January 15, 1980

1. What type of tenancy is created thereby?	T/E ³³ (34.15.110(b) Alaska Statutes)	T/E	T/E	T/C (34.15.110(b) Alaska Statutes)	T/E (34.15.130 Alaska Statutes)
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E ¹
c. Lease the property?	E ³	E ³		E ³	E ³
d. Partition the property?	N	N		E (09.45.260 Alaska Statutes)	
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	T/C

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ARIZONA

Gordon G. Waterfall
Tucson, Arizona
December 5, 1996

1. What type of tenancy is created thereby?	C/P	N/A	C/P	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	N/A	E	E	E
b. Income?	E	N/A	E	E	E
c. Lease the property?	E ⁴	N/A	E ⁴	E	E
d. Partition the property?	N ⁵	N/A	N ^{5,25}	E	E
3. What disposition is made of the property on one spouse's death?	X	N/A	X	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ²²	N/A	N/S	T/C ²²	T/C ²²

ARKANSAS

William D. Haight
Little Rock, Arkansas
November 11, 1996

1. What type of tenancy is created thereby?	T/E	T/E	N/A	T/C	NS ⁹ (Probably T/C)
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	
b. Income?	E ¹	E ¹		E ¹	
c. Lease the property?	E ^{3, 16}	E ^{3, 16}		E ⁷	
d. Partition the property?	N	N		E	
3. What disposition is made of the property on one spouse's death?	Y	Y		X	
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	N/S		NC	NC

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CALIFORNIA

Katheryn Ballsun
Los Angeles, California
October 15, 1996

1. What type of tenancy is created thereby?	C/P	N/A	C/P	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	N/A	E	E	E
b. Income?	E	N/A	E ¹	E ¹	E
c. Lease the property?	E	N/A	E	E ⁷	E
d. Partition the property?	?	N/A	NC	?	?
3. What disposition is made of the property on one spouse's death?	X	N/A	X	X	Y ³²
4. What is the result of adding the words "60% to John and 40% to Mary"?	C/P	N/A	C/P	/	N/A

COLORADO

L. William Schmidt, Jr.
Denver, Colorado
October 22, 1996

1. What type of tenancy is created thereby?	T/C	N/A	C/P (CRS 15-20-101)	T/C	J/T (CRS 38-31-101)
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	N/A	E	E	E
b. Income?	E	N/A	E	E	E
c. Lease the property?	E	N/A	E	E	E
d. Partition the property?	E	N/A	E	E	E
3. What disposition is made of the property on one spouse's death?	X	N/A	X	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	N/A	N/A	NC	T/C

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CONNECTICUT

Martin Wolman
Hartford, Connecticut
October 15, 1996

1. What type of tenancy is created thereby?	T/C (Conn. Gen. Stats. 47-36a, (b)(2))	J/T (Conn. Gen. Stats. 47-14a <i>et seq.</i>)	N/A	T/C	J/T (Conn. Gen. Stats. 47-14a, <i>et seq.</i>)
2. What rights are acquired of each spouse in such title holding to:					JT (Conn. Gen. Stats. 47-14a, <i>et seq.</i>)
a. Possession?	E	E	N/A	E	E
b. Income?	E	E	N/A	E	E
c. Lease the property?	E ³	E ³	N/A	E ³	E ³
d. Partition the property?	E (Conn. Gen. Stats. 52-495)	E (Conn. Gen. Stats. 52-495)	N/A	E (Conn. Gen. Stats. 52-495)	E (Conn. Gen. Stats. 52-495)
3. What disposition is made of the property on one spouse's death?	X	Y	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	NS	N/A	T/C	NS

DELAWARE

Thomas P. Sweeney
Wilmington, Delaware
November 13, 1996

1. What type of tenancy is created thereby?	T/E	T/E	NS (Probably T/E)	T/C	T/C unless document clearly reflects a different intent
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E ¹	E ¹
b. Income?	E	E		E ¹	E ¹
c. Lease the property?	E	E		E ³	E ³
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	NS		NC	NC

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DISTRICT OF COLUMBIA

J. Bruce Kellison
Washington, D.C.
October 4, 1996

1. What type of tenancy is created thereby?	T/C (DC Code §45-216)	T/E	N/A	T/C (DC Code §45-216)	T/E
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E	E		E	E
c. Lease the property?	E	E		E	E
d. Partition the property?	E	N ³⁰ (DC Code §16-910)		E	N ³⁰ (DC Code §16-910)
3. What disposition is made of the property on one spouse's death?	X	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	T/C		NC	T/C

FLORIDA

Author
City, State
Date

1. What type of tenancy is created thereby?					
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?					
b. Income?					
c. Lease the property?					
d. Partition the property?					
3. What disposition is made of the property on one spouse's death?					
4. What is the result of adding the words "60% to John and 40% to Mary"?					

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GEORGIA

William G. Witcher, Jr.
Decatur, Georgia
November 5, 1996

1. What type of tenancy is created thereby?	T/C	NS	NS	T/C	J/T ⁸
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E 44-6-121a			E 44-6-121a	E
b. Income?	E ¹ 44-6-121b			E1 44-6-121b	E1
c. Lease the property?	E7			E7	E7
d. Partition the property?	E 44-6-160			E 44-6-160	NS
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC ²⁷			NC ²⁷	NC

HAWAII

Randall M.L. Yee
Honolulu, Hawaii
February 3, 1997

1. What type of tenancy is created thereby?	T/C HRS 509-1	T/E	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	N/A	E	E
b. Income?	E ¹	E ¹	N/A	E ¹	E ¹
c. Lease the property?	E ⁷	E ³	N/A	E ⁷	E ¹⁶
d. Partition the property?	E	N	N/A	E	E
3. What disposition is made of the property on one spouse's death?	X	Y	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC ¹¹	E	N/A	NC ²⁷	T/C ²⁷

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IDAHO

Author
City, State
Date

1. What type of tenancy is created thereby?	C/P or T/C ³⁴	C/P or T/C	C/P	T/C or C/P NS	NS ³⁷
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	NS
b. Income?	E	E	E	E	NS
c. Lease the property?	E	E	E	E	NS
d. Partition the property?	N or E ³⁵	N or E ³⁵	N	E	NS
3. What disposition is made of the property on one spouse's death?	X	X	X	X	NS
4. What is the result of adding the words "60% to John and 40% to Mary"?	NS	T/C	N/A	T/C or NS ³⁶	NS

George W. Howard
Mr. Vernon, Illinois
September 25, 1996

ILLINOIS

1. What type of tenancy is created thereby?	T/C 765 ILCS 1005/1	T/E ³⁸ 765 iLCS 1005/1c	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	N/A	E	E
b. Income?	E ¹	E ¹	N/A	E ¹	E ¹
c. Lease the property?	E ²	E ³	N/A	E ²	E ²
d. Partition the property?	E 735 ILCS 5/17-101	N	N/A	E	E
3. What disposition is made of the property on one spouse's death?	X	Y	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	N/A	N/A	T/C	N/A

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INDIANA

Jeffrey B. Kolb
Vincennes, Indiana
November 14, 1996

1. What type of tenancy is created thereby?	T/E (IC 32-1-2-7 and IC 32-1-2-8)	T/E	T/E	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹	E ¹	E ¹	E ¹	E ¹
c. Lease the property?	E ³	E ³	E ³	E ³	E ³
d. Partition the property?	N (IC 32-4-5-1)	N	N	E	E
3. What disposition is made of the property on one spouse's death?	Y	Y	Y	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C	T/C	NC	T/C

IOWA

Author
City, State
Date

1. What type of tenancy is created thereby?					
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?					
b. Income?					
c. Lease the property?					
d. Partition the property?					
3. What disposition is made of the property on one spouse's death?					
4. What is the result of adding the words "60% to John and 40% to Mary"?					

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KANSAS

Don W. Noah
Beloit, Kansas
October 21, 1996

1. What type of tenancy is created thereby?	T/C	T/C	T/C	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	
b. Income?	E ¹	E ¹	E ¹	E ¹	
c. Lease the property?	E ³	E ³	E ³	E ³	
d. Partition the property?	E	E	E	E	
3. What disposition is made of the property on one spouse's death?	X (KSA 59-602(2))	X	X	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NC	NC	NC	NC

KENTUCKY

Randolph Noe
Louisville, Kentucky
October 10, 1996

1. What type of tenancy is created thereby?	T/C	NS (Probably T/C)	T/C	T/C	T/C39
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E		E	E	E
b. Income?	E ¹ (Chapter 404 KRS)		E ¹	E ¹	E ¹
c. Lease the property?	E ³ (Chapter 404 KRS)		E ³	E ³	E ³
d. Partition the property?	E (KRS 381.120)		E	E	E
3. What disposition is made of the property on one spouse's death?	X		X	X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	? ¹¹		? ¹¹	? ¹¹	NC

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LOUISIANA

Cecil E. Ramey, Jr. and
Shreveport, Louisiana Edward B. Benjamin, Jr.
New Orleans, Louisiana
October 27, 1983

1. What type of tenancy is created thereby?	C/P (Louisiana Civil Code Art. 2334, 2338)	N/A	C/P	N/A	N/A
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E		E		
b. Income?	E		E		
c. Lease the property?	E ³		E ³		
d. Partition the property?	N ¹⁰		N ¹⁰		
3. What disposition is made of the property on one spouse's death?	X (Code Arts. 888-890) Code of Civil Proc. 3061 and 3381.	? ⁴⁰	X		
4. What is the result of adding the words "60% to John and 40% to Mary"?	Co-ownership (Code Art. 2336)		NS		

MAINE

Philip C. Hunt
Portland, Maine
September 23, 1996

1. What type of tenancy is created thereby?	T/C	N/A	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E			E	E
c. Lease the property?	E ³			E ³	E ³
d. Partition the property?	NS			NS	NS
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ²⁷			T/C ²⁷	N/A

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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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MARYLAND

Evan A. Chriss
Baltimore, Maryland
October 4, 1996

1. What type of tenancy is created thereby?	T/E	T/E	NS (Probably T/E)	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E	E		E ¹	E ¹
c. Lease the property?	E ³	E ³		E ⁷	E ³
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	T/C

MASSACHUSETTS

Michael D. Brockelman
Worcester, Massachusetts
October 23, 1996

1. What type of tenancy is created thereby?	T/C	T/E	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E ⁴¹		E	E
b. Income?	E ¹	E ⁴¹		E ¹	E
c. Lease the property?	E ²	E ³		E ²	E ³
d. Partition the property?	E	N		E	E
3. What disposition is made of the property on one spouse's death?	X	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	T/C		NC	T/C

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MICHIGAN

James A. Kendall
Midland, Michigan
October 16, 1996

1. What type of tenancy is created thereby?	T/E (if marital status is indicated by separate proof of record)	T/E	N/A	T/C	NS (Probably T/E)
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	
b. Income?	E ¹² (P.A. 288)	E ¹²		E	
c. Lease the property?	E ^{2, 12} (P.A. 288)	E ^{2, 12}		E2	
d. Partition the property?	NS	NS		E	
3. What disposition is made of the property on one spouse's death?	Y	Y		X	
4. What is the result of adding the words "60% to John and 40% to Mary"?	NS (Probably T/C)	NS (Probably T/C)		NC	NS (Probably T/E)

MINNESOTA

Steve A. Brand
Minneapolis, Minnesota
November 29, 1996

1. What type of tenancy is created thereby?	T/C	N/A	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E - accountable to	each other		E	E
c. Lease the property?	E - with the other's consent			E - with the other's consent	E - with the other's consent
d. Partition the property?	E - other than homestead			E - other than homestead	E - other than homestead
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	Creates T/C in the stated proportions			Creates T/C in the stated proportions	NC

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MISSISSIPPI

W. McDonald Nichols
Jackson, Mississippi
September 24, 1996

1. What type of tenancy is created thereby?	T/C (89-1-7, Miss. Code of 1973)	T/C ^{9, 26}	T/C	T/C	T/C ^{9, 26}
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹	E ¹	E ¹	E ¹	E ¹
c. Lease the property?	E ^{3, 7}	E ^{3, 7}	E ^{3, 7}	E ^{2, 7}	E ^{3, 7}
d. Partition the property?	E(11-21-1 <i>et seq.</i> Miss. Code of 1972)				
3. What disposition is made of the property on one spouse's death?	X	X	X	X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	? ²⁷	? ²⁷	? ²⁷	? ²⁷	? ²⁷

MISSOURI

Stephen N. Limbaugh
Cape Girardeau, Missouri
December 3, 1996

1. What type of tenancy is created thereby?	T/E	T/E	NS	T/C	J/T (442.450)
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E ¹
c. Lease the property?	E ³	E ³		E ³	E ³
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	? ²⁷	NS		? ²⁷	? ²⁷

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MONTANA

David L. Johnson
Billings, Montana
October 21, 1996

1. What type of tenancy is created thereby?	T/C	NS	NS	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E ¹ (70-1-311, MCA)			E ¹	E ¹
c. Lease the property?	E ⁷			E ⁷	E ⁷
d. Partition the property?	E (70-29-101)			E	E
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC			NC	NC

NEBRASKA

Wallace Becker
Lincoln, Nebraska
October 1, 1996

1. What type of tenancy is created thereby?	T/C	NA	NA	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E			E	E
c. Lease the property?	E ³			E ³	E ³
d. Partition the property?	E			E	E
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ²⁷			T/C ²⁷	NC

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NEVADA

Robert E. Armstrong
Reno, Nevada
March 1, 1997

1. What type of tenancy is created thereby?	T/C (NRS 111.060, NRS 123.130) or C/P (NRS 123.220)	N/A	C/P (NRS 111.964)	T/C ²² (NRS 111.063)	J/T (NRS 111.065); presumptively C/P, held as J/T ²²
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E		E	E	E
b. Income?	E ¹		E ¹	E ¹	E ¹
c. Lease the property?	E ²⁰ (NRS 123.230)		E ²⁰ (NRS 123.230)	E ²⁰	E ²⁰
d. Partition the property?	E (NRS 39.010) or E ¹³ if C/P		E ¹³	E (NRS 39.010)	E (NRS 39.010)
3. What disposition is made of the property on one spouse's death?	X		X ³³	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	? ²⁷ - "creates tenancy in common in the proportions stated"		NC	? ²⁷ - "creates tenancy in common in the proportions stated"	? ²⁷ (terminates the J/T)

NEW HAMPSHIRE

Joseph S. Ransmeier
Concord, New Hampshire
November 4, 1996

1. What type of tenancy is created thereby?	T/C	J/T <i>Clark v. Clark</i> 56 N.H. 105 at 110 (1875)	T/C	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E	E	E	E	E
c. Lease the property?	E ⁷	E ⁷	E ⁷	E ⁷	E ⁷
d. Partition the property?	E (RSA 547C:1)	E (RSA 547C:1)	E (RSA 547C:1)	E (RSA 547C:1)	E (RSA 547C:1)
3. What disposition is made of the property on one spouse's death?	X	X	X	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ²⁷	T/C ^{27a}	T/C ²⁷	T/C ²⁷	J/T ^{27a}

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NEW JERSEY

Howard G. Wachenfeld
Newark, New Jersey
November 5, 1996

1. What type of tenancy is created thereby?	T/E	T/E	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E1
c. Lease the property?	E ³	E ³		E ³	E3
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	T/C

NEW MEXICO

Author
City, State
Date

1. What type of tenancy is created thereby?					
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?					
b. Income?					
c. Lease the property?					
d. Partition the property?					
3. What disposition is made of the property on one spouse's death?					
4. What is the result of adding the words "60% to John and 40% to Mary"?					

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NEW YORK

Donald J. Farinacci
Melville, New York
April 3, 1997

1. What type of tenancy is created thereby?	T/E (New EPTL 6-2.1 Eff. 1/1/96)	T/E (New EPTL 6-2.1 Eff. 1/1/96)	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	¹ (New Dom Rel. Law	50) E ¹		E ¹	E ¹
c. Lease the property?	E ¹⁶	E ¹⁶		E ¹⁶	E ¹⁶
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	T/C

NORTH CAROLINA

James T. Hedrick
Durham, North Carolina
December 12, 1979

1. What type of tenancy is created thereby?	T/E	T/E	N/S ⁴³	T/C	J/T ⁴⁴
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E	E		E ¹	E ¹
c. Lease the property?	E ⁴²	E ⁴²		E ⁷	E ⁷
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	X ⁹
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	T/C

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NORTH DAKOTA

Wesley A. Argue
Hamilton, North Dakota
October 10, 1996

1. What type of tenancy is created thereby?	T/C (47-02-08 NDCC)	N/A	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E ¹			E ¹	E ¹
c. Lease the property?	E ³			E ³	E ³
d. Partition the property?	E			E	E
3. What disposition is made of the property on one spouse's death?	X			X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC			NC	NS

OHIO

John W. Eilers, Fr.
Cincinnati, Ohio
September 24, 1996

1. What type of tenancy is created thereby?	T/C	J/T (O.R.C. 5302.17)	T/C	T/C	T/C ⁹
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹	E ¹	E ¹	E ¹	E ¹
c. Lease the property?	E ³	E ³	E ³	E ³	E ³
d. Partition the property?	E	E	E	E	E
3. What disposition is made of the property on one spouse's death?	X	X	X	X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NC	NC	NC	NC

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OKLAHOMA

James F. Gibbens
Oklahoma City, Oklahoma
November 6, 1996

1. What type of tenancy is created thereby?	T/C	NS	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E			E	E
b. Income?	E ¹			E ¹	E ¹
c. Lease the property?	E ⁷			E ⁷	E ⁷
d. Partition the property?	E ¹³			E ¹³	E ¹³
3. What disposition is made of the property on one spouse's death?	x			X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC			NC	NC

OREGON

Campbell Richardson
Portland, Oregon
November 10, 1996

1. What type of tenancy is created thereby?	T/E	T/E	N/A	T/C	T/E
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	N/A	E	E
b. Income?	E	E	N/A	E	E
c. Lease the property?	E	E	N/A	E	E
d. Partition the property?	N	N	N/A	E	
3. What disposition is made of the property on one spouse's death?	Y	Y	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NR	NR	N/A	NC	NS

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PENNSYLVANIA

Mark Bookman
Pittsburgh, Pennsylvania
March 10, 1997

1. What type of tenancy is created thereby?	T/E	T/E	N/A	T/C	T/E
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E	E		E ¹	E
c. Lease the property?	E	E		E ⁷	E
d. Partition the property?	N	N		E	N
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		T/C	T/C

RHODE ISLAND

Richard B. Sheffield
Newport, Rhode Island
October 15, 1996

1. What type of tenancy is created thereby?	T/C (B4-3-1, GL 1956)	T/E	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	N/A	E	E
b. Income?	E ¹ (10-2-1)	E ¹	N/A	E ¹	E ¹
c. Lease the property?	E ⁷	E ³	N/A	E ⁷	E ³
d. Partition the property?	E (34-1501, GL1956)	N	N/A	E (34-1401, GL 1956)	E
3. What disposition is made of the property on one spouse's death?	X	Y	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	Change in proportionate property interest only	N/A	N/A	Change in proportionate property interest only	N/A

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S/P = Separate property

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Y = Surviving spouse acquires title automatically on death of other
N = Neither spouse may require during marriage
E = Each spouse has equal rights, entitlement, or power with respect to matter indicated
H = Husband only is entitled or empowered with respect to matter indicated
NS = Not settled under law of jurisdiction indicated
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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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SOUTH CAROLINA

Karen Bartley Rollison
City, South Carolina
Date

1. What type of tenancy is created thereby?	T/C ⁴⁵	N/A ⁴⁶	N/A	T/C	J/T ⁴⁷
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E ⁴⁸			E ⁴⁸	E ⁴⁸
b. Income?	E ^{1, 49}			E ^{1, 49}	E ^{1, 49}
c. Lease the property?	E ^{7, 50}			E ^{7, 50}	E ^{7, 50}
d. Partition the property?	E (S.C. Code Ann. § 15-61-10	Law. Co-op. 1976))		E (S.C. Code Ann. § 15-61-10)	E (S.C. Code Ann. §15-61-10)
3. What disposition is made of the property on one spouse's death?	X ⁵¹			X ⁵¹	X ⁴⁷
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC ^{27, 52}			NC ^{27, 52}	NS

SOUTH DAKOTA

Thomas H. Foye
Rapid City, South Dakota
September 23, 1996

1. What type of tenancy is created thereby?	T/C ⁹	N/A	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	N/A	N/A	E	E
b. Income?	E ¹	N/A	N/A	E ¹	E ¹
c. Lease the property?	E ⁷	N/A	N/A	E ⁷	E ³
d. Partition the property?	E	N/A	N/A	E	E
3. What disposition is made of the property on one spouse's death?	X	N/A	N/A	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ²⁷	N/A	N/A	T/C ²⁷	NC

ABBREVIATIONS:

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C/P = Community property
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Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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TENNESSEE

William N. Dearborn
Nashville, Tennessee
November 7, 1996

1. What type of tenancy is created thereby?	T/E	T/E	NS ³¹	T/C	T/E ⁹
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹	E ¹	E ¹	E ¹	E ¹
c. Lease the property?	E ³	E ³	E ³	E ³	E ³
d. Partition the property?	N	N	N	E	N
3. What disposition is made of the property on one spouse's death?	Y	Y	Y	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	NS	T/C	NC	T/C ⁹

TEXAS

Lucian Morehead
Plainview, Texas
October 28, 1996

1. What type of tenancy is created thereby?	C/P ¹⁸				
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E ^{18, 19}				
b. Income?	E ¹⁹				
c. Lease the property?	E ^{7, 18, 19, 13}				
d. Partition the property?	N ^{10, 13}				
3. What disposition is made of the property on one spouse's death?	X	X	X	X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NC	NC	NC	NC

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UTAH

Author
City, State
Date

1. What type of tenancy is created thereby?					
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?					
b. Income?					
c. Lease the property?					
d. Partition the property?					
3. What disposition is made of the property on one spouse's death?					
4. What is the result of adding the words "60% to John and 40% to Mary"?					

VERMONT

R. Clark Smith
Rutland, Vermont
October 4, 1996

1. What type of tenancy is created thereby?	T/E	T/E	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E ¹
c. Lease the property?	E ³	E ³		E ³	E ³
d. Partition the property?	N	N		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C	T/C		NC	NC

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VIRGINIA

Thomas S. Word, Jr.
Richmond, Virginia
September 23, 1996

1. What type of tenancy is created thereby?	T/C (55-20)	T/E	N/A	T/C	T/C ⁹
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E ¹
c. Lease the property?	E ⁷	E ⁷		E ⁷	E ⁷
d. Partition the property?	E	N		E	E
3. What disposition is made of the property on one spouse's death?	X	Y		X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NS		NC	NC

WASHINGTON

Gary C. Randall
Spokane, Washington
October 18, 1996

1. What type of tenancy is created thereby?	C/P ⁵³	C/P ⁵³	C/P	T/C ^{22, 53}	J/T ^{22, 53}
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E	E	E	E	E
c. Lease the property?	E ³	E ³	E ³	E ⁷	E ⁷
d. Partition the property?	N	N	N	E	E
3. What disposition is made of the property on one spouse's death?	X	X	X	X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NS ⁵⁴	NS ⁵⁴	NS ⁵⁴	NC	NS

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C/P = Community property
S/P = Separate property

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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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WEST VIRGINIA

Noel P. Copen
Huntington, West Virginia
November 4, 1996

1. What type of tenancy is created thereby?	T/C (36-1-19,20 48-3-1)	T/C	T/C	T/C	T/C ⁹
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹ (55-8-13)	E ¹	E ¹	E ¹	E ¹
c. Lease the property?	E ⁷	E ⁷	E ⁷	E ⁷	E ⁷
d. Partition the property?	E	E	E	E	E
3. What disposition is made of the property on one spouse's death?	X (36-1-19,20)	X	X	X	X
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NC	NC	NC	NC

WISCONSIN #1 Acquisitions Before January 1, 1986

John B. Haydon
Milwaukee, Wisconsin
October 30 1996

1. What type of tenancy is created thereby?	J/T	J/T	N/A	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E ¹	E ¹		E ¹	E ¹
c. Lease the property?	E ³	E ³		E ³	E ³
d. Partition the property?	E	E		E	E
3. What disposition is made of the property on one spouse's death?	Y	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	T/C ⁶¹	T/C ⁶¹		NC	T/C ⁶¹

ABBREVIATIONS:

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X = Decedent's interest in property passes in accordance with his or her will, or by intestacy, subject to surviving spouse's dower, curtesy, elective share, or equivalent (if any) provided under law of state indicated.

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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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WISCONSIN #2 Homestead Acquisitions After December 31, 1985

Note: Marital property in Wisconsin is a form of community property.

1. What type of tenancy is created thereby?	Survivorship Marital Property				
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹				
c. Lease the property?	E ⁵⁵				
d. Partition the property?	N/A ⁵⁶				
3. What disposition is made of the property on one spouse's death?	Y	Y	Y	Y	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	N/A ⁵⁷				

WISCONSIN #3 Non-Homestead Acquisitions After December 31, 1985

Note: Marital property in Wisconsin is a form of community property.

1. What type of tenancy is created thereby?	Marital Property				
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E	E	E	E
b. Income?	E ¹				
c. Lease the property?	E ⁵⁵				
d. Partition the property?	N/A ⁵⁶				
3. What disposition is made of the property on one spouse's death?	X ⁵⁹	Y	X ⁵⁹	X ⁵⁹	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	N/A ⁶⁰				

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ABBREVIATIONS:

Y = Surviving spouse acquires title automatically on death of other
N = Neither spouse may require during marriage
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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

Realty conveyed or willed to:	A "John Doe Mary Doe"	B "John Doe and Mary Doe as tenants by the entireties"	C "John Doe and Mary Doe as community property"	D "John Doe and Mary Doe as tenants in common"	E "John Doe and Mary Doe as joint tenants"
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WYOMING

Thomas N. Long
Cheyenne, Wyoming
December 3, 1996

1. What type of tenancy is created thereby?	T/C ²⁹	T/E	NS	T/C	J/T
2. What rights are acquired of each spouse in such title holding to:					
a. Possession?	E	E		E	E
b. Income?	E	E		E	E
c. Lease the property?	E ³	E ³		E ³	E ³
d. Partition the property?	E	N ³⁰		E	NS
3. What disposition is made of the property on one spouse's death?	X	Y		X	Y
4. What is the result of adding the words "60% to John and 40% to Mary"?	NC	NS		NC	NS

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REAL PROPERTY IN NAMES OF HUSBAND AND WIFE

Where John and Mary Doe are husband and wife at the time title passes to them, domiciled in the state indicated.

NOTES

1. But each spouse is accountable to the other for income received.
2. But lease signed by only one spouse is not binding on the other.
3. But neither spouse may lease property without the concurrence of the other.
4. With respect to community property, signature of only one spouse required if lease for less than one year.
5. Neither spouse may require partition during marriage with respect to community property, but may with respect to separate property.
6. Still a presumption of community property, unless property was acquired prior to 1-1-75 by a married woman under an instrument in writing, in which case it will be presumed that her undivided half interest is held as separate property, held as tenant in common (the other half of the property would be community property).
7. Lease by one spouse can affect only his or her interest in property.
8. If transfer occurred after 1-1-77.
9. But if express words of survivorship are added (e.g., "as joint tenants with right of survivorship and not as tenants in common"), a joint tenancy with right of survivorship is created.
10. Voluntary partition is available during continuation of the community, but judicial partition is available only after termination of the community regime.
11. Would be separate property of each spouse in proportions stated.
12. Probably applies only if conveyance occurred on or after 12-10-75.
13. Other than homestead.
14. Assuming acquisition on or after 7-1-73.
15. Either spouse may sign if lease is for five years or less, otherwise both must sign.
16. But lease cannot affect right of other spouse to possession.
17. If conveyance occurred after 2-2-72.
18. Unless acquired by gift, devise, descent, or purchase with separate funds; except that, in California, property could be acquired with separate property funds and still result in community property (e.g., by equal contribution by both spouses, or by unequal contribution and a gift by one spouse).
19. Unless under sole management of such spouse.
20. Either spouse is presumed to have authority to act for both, but must benefit both and be with acquiescence of the other.
21. The impact of the new Pennsylvania Divorce Code (effective 3-19-91) on the matters covered by this Study has not been determined.
22. In the case of realty conveyed, required proof of acceptance by both spouses to rebut presumption of community property.
23. In Arizona, if realty willed, then creates tenancy in common.
24. In Arizona, if realty willed, then law is not settled.
25. In Arizona, if realty willed, then each spouse has right of partition.
26. In Mississippi, it must manifestly appear from instrument that a joint tenancy by the entireties with right of survivorship is intended, and general practice is to add "with full rights of survivorship and not as tenants in common."
27. Creates tenancy in common in the proportions stated.
- 27a. Creates joint tenancy in which interests of co-tenants during their mutual lifetimes are in proportions stated, and entire passes to survivor at death of first to die.
28. But lease would fail if wife survives husband, without her prior joinder or consent.
29. But T/E if words "husband and wife" follow designation.
30. May be partitioned by divorce.
31. No statutory or case law on point, but there is a presumption of creation of T/E where conveyance to husband and wife.
32. In Alabama, if title is taken as "tenants in common with right of survivorship," neither party can partition the property and the property will pass to the survivor at the first death.
33. In Alaska, as to column A, see *Fauk v Estate of Hasians*, 714F2d 354, 355, where the court held that the second sentence in AS 34, 15, 110 (b) was not a condition precedent to a creation of a tenancy by the entireties.
34. All property of husband and wife acquired after marriage is community property (Idaho Code § 32-906), except property acquired by gift, bequest, devise, descent or as the proceeds of separate property (Idaho Code § 32-903). Every interest in real property created in favor of two or more persons is a tenancy in common unless acquired in partnership or as community property, or declared in the instrument of conveyance to be a joint tenancy. (Idaho Code §§ 55-104 and 55-508.)
35. A tenancy in common may be partitioned (Idaho Code ¶ 6-501), but community property may not.
36. It is not clear whether the phrase "as tenants in common" is sufficient to overcome the presumption that property acquired during marriage is community property.

37. The Idaho courts have held that depositing funds in a joint account does not create a joint tenancy with right of survivors in the absence of clear and convincing evidence of the depositor's intent. *Estate of Lewis*, 97 Idaho 299, 543 P.2d 852 (1975); *The Idaho First National Bank v. First National Bank of Caldwell*, 81 Idaho 285, 340 P.2d 1094 (1959). It is likely that the same standard would be applied to real property. In that case, the form of the grant is insufficient to create a joint tenancy with right of survivorship.
38. Homestead property only created after October 1, 1990. Reverts to joint tenancy if spouses create and maintain a different homestead. Tenancy in common created upon dissolution of marriage unless Court determines otherwise.
39. If express words of survivorship are added, a tenancy by the entirety would be created.
40. See civil code art. 1493, 1495, 1499, 568, 1493, 1514 for issues relating to "forced heirship."
41. Assuming acquisition on or after February 11, 1980.
42. Lease requires joinder of other spouse.
43. In North Carolina, generally a conveyance to a husband and wife creates a tenancy by the entireties unless a contrary intention appears. Although a contrary intention appears under this scenario, since there is no community property law in North Carolina, it is unclear whether such a conveyance would result in a tenancy by the entireties or a joint tenancy.
44. Survivorship abolished in joint tenancies unless provided for by contract.
45. An estate in joint tenancy is disfavored. *See Davis v. Davis*, 75 S.E.2d 46, 47 (S.C. 1953).
46. The estate of tenancy by the entirety does not exist in South Carolina. *Davis v. Davis*, 75 S.E.2d 46, 47 (S.C. 1953).
47. No right of survivorship is created unless express words of survivorship are added. S.C. Code Ann. §62-2-804 (Law. Co-op. 1987)).
48. A cotenant has the right, in common with other cotenants, to the possession of the property owned in common, but no distinction is made in the case law as to whether the cotenants are joint tenants or tenants in common. *See Watson v. Little*, 79 S.E.2d 384, 387 (S.C. 1953).
49. *See generally Cain v. Cain*, 31 S.E. 278 (S.D. 1898); no distinction is made in the case law as to whether the cotenants are joint tenants or tenants in common.
50. *See generally Moore v. Maes*, 52 S.E.2d 204, 208 (S.C. 1949); no distinction is made in the case law as to whether the cotenants are joint tenants or tenants in common.
51. Unless the conveyance included express words of survivorship. If express words of survivorship are added, a tenancy in common with right of survivorship can be created. *See South Carolina nat'l Bank v. Halter*, 359 S.E.2d 74, 78 (S.C. Ct. App. 1987).
52. *See generally* S.C. Code Ann. §27050130 (law. Co-op. Supp. 1995) for all deeds executed after 12/31/93.
53. *See Marriage of Martin*, 32 Wn. App. 92 (Wash. Court of Appeals, 1982), and *Estate of Salvini*, 65 Wash. 2d 442 (Wash. Supreme Court 1964). Most recently, Division 1 of the Washington Court of Appeals in *Marriage of Olivares*, 9 Wash. App. 2d 324 (1993), has ruled that this presumption will prevail unless there is a "contemporaneous clearly stated intent by the donors to the contrary." There is a statutory presumption that property held by husband and wife in joint names is community property. R.C.W. 64.28.020. These same principles will apply to a conveyance using the language in Columns B, D or E. Although there are no cases on point, it is probable that R.C.W. 64.28.040 (dealing with joint tenancy with right of survivorship between spouses) will apply.
54. Community property must be co-owned (50%-50%). A devise which uses some other ownership might result in a Washington court determining that this is not a community property ownership under the theory that the language evidences the intent that the property not be community in nature. The most logical result would be a form of true tenancy in common between the spouses.
55. Joinder of both spouses is required.
56. It appears that partition is not available as a matter of right, but various specific statutory remedies are available to either spouse under specific circumstances.
57. Unsettled; probably ineffective to vary the result that the spouses would hold the homestead as survivorship marital property with each owning an undivided one-half marital property.
58. This result is not clear; presumably, tenancy by the entirety (not recognized as such in Wisconsin) would be equated with joint tenancy, with the result that survivorship marital property is created.
59. No dower, curtesy, elective share or equivalent is provided under Wisconsin law with respect to the decedent's one-half interest in former marital property.
60. Unsettled; probably ineffective to vary the result that the spouses would hold the real estate as marital property or survivorship marital property, as applicable, with each owning an undivided one-half marital property interest.
61. Unsettled; it is possible that the percentages would be disregarded and a joint tenancy would be created.
62. This result is not clear; presumably, tenancy by the entirety (not recognized as such in Wisconsin) would be equated with joint tenancy.
63. Texas Family Code provides all property acquired by either spouse during marriage is community property except property acquired by gift, devise or descent and recovery for personal injuries (except loss of earning capacity). Section 5.01. All property possessed by either party during or on dissolution of marriage is presumed to be community. Section 5.02.