



A Jolt to Joint Tenancy: WARNING SHOT TO SENIORS

By Donald A. Hunsberger

As some senior citizens have learned, even long-standing basics of the law don't withstand the needs of government agency to pay the costs of health care.

In California, the Department of Health Services (DHS) operates under a regulation that changes the common law character of joint tenancy. This regulation, known as 22 CCR 50960.12 [DHS 12], effectively overhauled the legal concept of the *Right of Survivorship* previously practiced under California Common Law.

Under the *Right of Survivorship*, which existed in joint tenancy definitions before California even became a state, if someone owned property with someone who was joint tenant instead of a tenant in common, the first person's death caused the rights of that deceased in that property to die with him or her, making his or her interest pass to the other owner or owners instantly at the moment of his or her death with no requirement of a will, a trust, a deed, or probate. The death wiped out the ownership interest of the deceased joint tenant, and the interests of the other owner or owners immediately increased without any actions required on their parts.

In other words, a one-half owner of a property who survived the death of a joint tenant would have expected to become the full owner of that property after the other joint tenant died, without any creditors having the ability to attack the property through the deceased's estate

unless they had previously filed a lien against the property. The amazing thing is that DHS has published materials that make it appear that its one regulation is the "law of California," which clearly it is not. It is a single rule of one solitary agency. Unfortunately, as often happens with ill-conceived laws, the effects of DHS 12 have reached beyond their intended consequences.

Consider the impact on Robert, an 80+ year-old man who felt concern over the plight of a long-term friend, Harry. Harry had home problems so Robert, who had a large debt-free home that was paid off, let Harry move into his home. Both widowers enjoyed the arrangement, since it meant that they both had someone to talk to in the morning.

Robert wanted to avoid the cost of a will or a trust, so he found a computer program at a stationery store and printed out a new deed for his home which named Robert's son Frank and Robert's friend Harry as joint tenants with him on his property. Robert's goal was to have his property automatically pass at the time of his death under Section 13050 of the Probate Code to both his friend Harry, and to his son Frank. Robert planned to have Harry own the home jointly with Frank as survivors after Robert died; the

next step was for Frank to receive the home by *Right of Survivorship* from Harry when Harry died.

If Robert had talked to Harry about his plan, he would have learned that Harry had already started to feel the effects of Alzheimer's Disease, and would not outlive Robert. Harry spent two years in a long-term care center, sponsored by Medi-Cal, and died owing a significant sum to the state. After Harry's death DHS filed a lien against Robert's property (without his knowledge) for the funds spent on Harry's stay at the center.

When Robert died his son Frank received the home by *Right of Survivorship*, subject to the lien from the state. In effect, it was not the rights of the Nursing Home debtor, Harry, which the law affected; instead, it was the legal rights of the survivor Robert, which were violated.

It is important to remember that Harry had never contributed financially to the cost of Robert's home. In fact, he had never paid rent to Robert, and he had never paid any of the additional costs of running the household that came from his living with Robert. Robert's generosity had been a wonderful impulse, but he should have asked an advisor about whether the step of putting his friend on his home as a joint tenant was the best way to help his friend. Joint tenancy has always carried multiple tax and control problems for estate planning that make it inefficient; the DHS 12 provisions that eliminate the effects of the Right of Survivorship make it far too dangerous to use for senior planning purposes.

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