

Title Tips - "NJ Transfer Inheritance Tax"

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Question: If title to real property is held by joint tenants and one of the joint tenants dies, is the interest in the real property acquired by the surviving joint tenant[s] subject to New Jersey Transfer Inheritance Tax?

Answer: Yes, unless the transfer of the interest is otherwise exempt from New Jersey Transfer Inheritance Taxes [i.e. the surviving joint tenant[s] are "Class A" beneficiaries].

Joint tenancy is available to two or more persons; the last survivor of the group will take title to the property. Pursuant to N.J.S.A. 54:34-1 et seq., New Jersey Transfer Inheritance Tax is due on the "transfers" of a decedent's assets. The term "transfers" includes transfers to a decedent's devisees under a will, or heirs if a decedent dies without a will. However, it also includes transfers that occur by operation of law as a result of a decedent's death.

In the case of a joint tenancy, upon the death of one joint tenant his or her interest passes, by operation of law, to the surviving joint tenants. Therefore, such a transfer can be a taxable event, unless there is an exemption from payment of Transfer Inheritance Tax for some other reason, such as the fact that the surviving joint tenants are Class A beneficiaries [i.e. a husband, wife, civil union partner, father, mother, grandparent, child, grandchild or stepchild of the deceased joint tenant].

Please keep in mind that property owned by a resident decedent as a joint tenant may also be subject to NJ Estate Taxes if the decedent's estate has an overall gross value of \$675,000.00 or more, and therefore may be subject to a lien in favor of the State of New Jersey if such taxes are not paid. Unpaid Federal Estate Taxes do not pose a similar problem. If the deceased joint tenant leaves an estate that is subject to payment of Federal Estate Taxes, any unpaid Federal Estate Taxes would become a lien on the proceeds of sale [as opposed to the real property] at the time that the surviving joint tenant sells the property to a third party.

Please feel free to contact our Underwriting staff if you have any questions.

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