

Application of Joint Tenancy on Real Property and Its Impact Under The Law of Succession in Malaysia

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ABSTRACT

Joint ownership refers to the property owned by two or more persons. There are two significant forms of joint ownership the real estate: joint tenancy and tenancy-incommon. Under the common law, joint tenancy has been applied as a mechanism for administering an estate, which takes effect after the joint owner's or joint tenant's death. If any of the joint tenants died, the left portion of the deceased would obligatorily be conceded to the surviving joint tenant. It will not form part of the deceased's estate. In Penang, the joint tenancy contract is acknowledged by the National Land Code (Penang and Malacca Titles) Act 1963, that the whole estate of the survivor will be succeeded by the survivor under the rule of survivorship. The rights of survivorship are recognised by the statute underlined in Section 47(1)(c) of the Code, and are embedded together between two or more individuals whose names were registered in the provisional record. Notwithstanding the above provisions, the National Land Code (Act 828) recognises only tenancy-in-common and not joint tenancy. Consequently, the ownership will be shared not only during the lifetime of the joint tenant but extended even after death, and will be considered part of the deceased joint tenant's estate. This has caused hardship to the surviving joint owner, especially when the joint owners had jointly acquired and developed property. Hence, it is timely to explore the concept of joint tenancy under the common law and examine its validity under the law of succession in Malaysia. The research also aims to propose a regulatory framework and suitable mechanism for the land conveyance process in the application of joint tenancy. This research is based on the qualitative research and analysis of the primary and secondary materials through the governing statutes, reported cases, semiconducted interviews, focus group discussions, and data obtained from the respective administrative bodies. For the comparative analysis, the research explores the law and practice of joint tenancy in Singapore and Australia for the dual legal and Torrens systems, respectively. It is predicted that the joint tenancy application would give the proprietor more options in planning the management of his property and rightly give the surviving joint tenant the full enjoyment of the property.