

Joint Tenancy v. JTWROS: the Label Matters

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A practice tip for the unwary: the language "joint tenancy with full rights of survivorship" includes a joint life estate with a dual contingent remainder. This interest is distinct from a simple "joint tenancy." A conveyance can sever a joint tenancy, but cannot sever a joint tenancy with right of survivorship. *Kulinski v. Kulinski*, (Mich App No. 318091, December 9, 2014, unpublished) illustrates the difficulties which arise when deeds fail to accurately designate the nature of a transferee's interest. In 1985, a mother conveyed property reserving a life estate to herself and the remainder to two sons as joint tenants with rights of survivorship. In 1998, mother and two sons deeded the property to mom, the two sons, and a daughter as joint tenants with rights of survivorship. After the mother's death and much infighting, the sons requested a division and partition.

The trial court ordered the (1) "fee simple interest," (2) the life estates, and, (3) the dual contingent remainder interests sold. However while the COA agreed that the saleable interest was "an estate the duration of which extends until the death of the third of the four parties to die, after which time the then surviving party shall become the fee simple owner of the property," the COA held that *only* the parties' life estate interests, not the fee simple interest, could be partitioned and sold. The court relied on an earlier holding that an express right of survivorship (JTWROS) prevents a joint tenant from severing the tenancy by conveying their interest. *Albro v. Allen*, (434 Mich 271, 274(1980)).

The *Kulinski* parties could only sell the property for the duration of the lives of three of the four children. The daughter's fee simple interest will not vest and be transferable until she outlives her brothers.