



Ask the TITLEMAN™

October 2011

Q & A

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A. I hope this finds you well. I need your opinion on something and I'm hoping you can assist me. I'm trying to figure out if a deed is a joint tenancy deed or quit-claim deed. The title says quit-claim deed and the contents indicate joint tenants. What can you tell me about this? The holders named under the deed are/were mother and son. She has died and they indicate that the son is the surviving owner. I think it's appropriate to direct them to probate court don't you?

A. Great to hear from you. Whether it is a Joint Tenancy deed or Quit Claim deed is sort like comparing apples and oranges. This is because joint tenancy refers to how the grantees are acquiring title while a quit claim deed reference typically refers to what the grantee is receiving in the deed. So the references are really referring to different aspects of the transfer. Perhaps they can establish by other evidence and further review of the document itself that they were meant to be joint tenants with rights of survivorship. Otherwise, they may have to go through probate. If the deed fails as joint tenancy deed with right of survivorship, then the grantees acquire title as tenants in common which does not have an automatic survivorship right. That said, perhaps an informal probate or affidavit of transfer of real property would work?

Q. The original lender/beneficiaries (husband and wife) of a loan have both passed away. The son was named as the personal representative on behalf of his mother. He then assigned the interest in the deed of trust to himself and his wife,

signing as personal representative of both his parents. He said he only probated his mom's estate and signed the assignment as per his lawyer's instructions, thinking his father's estate had been taken care of by his mother. At this point I believe that he will need to probate his father's estate, etc. Is there anything else they can do or is that the only option?

A. Sounds like they did not hold their interest under the deed of trust as joint tenants with rights of survivorship. In addition to a possible probate, the attorney could consider whether or not the affidavit of transfer for interest in real property is appropriate pursuant to ARS 14-3971. You may want to find out the reasoning of the attorney as perhaps he has more information.

Q. A judgment shows the defendants "ABC Entities 1-10 and XYZ Corps 1-10" and then "John Does I-X, Jane Does I-X, ABC Corps etc..." Does this mean the judgments affect any and everything out there?

A. Not exactly. The reference to ABC entities and John Doe, etc. is the way attorneys reference entities and people which they do not currently know the names of- assuming they ever determine them. Sometimes they never materialize as real parties at all. But if they do the lawyers can amend their lawsuit to later add the real entity/party/name when and if they discover it.

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