

**RESOLUTION 04-01-2008**

**DIGEST**

Joint Tenancy: Restriction to Natural Persons

Amends Civil Code section 683 to require that only natural persons may hold title in joint tenancy with right of survivorship.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 683 to require that only natural persons may hold title in joint tenancy with right of survivorship. This resolution should be approved in principle because allowing an entity, which will never die and always be the survivor, to join in joint tenancies with a right of survivorship, defeats the purpose of this form of ownership.

Joint tenancies are an ancient form of real property ownership, created by the common law, before modern entities existed. Entities which do not die are a more modern creation. Because an entity will never die, it will always be “the survivor” of joint tenancies, and thus creates a trap for the unwary. Current California law as to the participants in a joint tenancy is uncertain, as this issue has never been adjudicated, and this resolution will clarify the law.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 683 to read as follows:

- 1    § 683.
- 2       (a) A joint interest is one owned only by two or more natural persons in equal shares,
- 3    by a title created by a single will or transfer, when expressly declared in the will or transfer
- 4    to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or
- 5    from tenants in common or joint tenants to themselves or some of them, or to themselves
- 6    or any of them and others, or from a husband and wife, when holding title as community
- 7    property or otherwise to themselves or to themselves and others or to one of them and to
- 8    another or others, when expressly declared in the transfer to be a joint tenancy, or when
- 9    granted or devised to executors or trustees as joint tenants. A joint tenancy in personal
- 10   property may be created by a written transfer, instrument, or agreement.
- 11       (b) Provisions of this section do not apply to a joint account in a financial institution if
- 12   Part 2 (commencing with Section 5100) of Division 5 of the Probate Code applies to such
- 13   account.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS:**

Existing Law: The right of survivorship is considered the single most important feature of a joint tenancy that distinguishes it from other forms of cotenancy. *Estate of Propst* (1990) 50 Cal.3d 448. Under existing California law, however, the term "person" is generally construed to include legal entities, including corporations. Since the perpetual life of a corporation would prevent a cotenant of the corporation from holding any meaningful survivorship rights, it appears inconsistent with the concept of a joint tenancy to allow a corporation to be a joint tenant. However, the literal language of Civil Code section 683 suggests that a corporation or other entity could be a joint tenant. Although this problem was recognized more than 50 years ago in a California appellate decision, *Bank of America v. Long Beach Federal Savings and Loan Ass'n.* (1956)141 Cal App. 2d 618, it has never been resolved.

This Resolution: Would clarify that legal entities may not be joint tenants.

The Problem: Under current law, a person who reads Civil Code section 683 may conclude that a joint tenant could include a legal entity. This legislation will clarify the law and remove a "trap for the unwary" that may exist under the current statute.

**IMPACT STATEMENT:**

This resolution does not affect any other law, statute or rule.

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