

Title

FREQUENTLY ASKED ^ QUESTIONS

March 2011

Title is vested in two people as joint tenants. One of the parties has died and the surviving joint tenant is under contract to convey the real estate. There is no inheritance or estate tax implication, is there?

Actually, there is.

Both New Jersey and Federal law provide that the interest "passing" to the surviving joint tenant(s) may be taxable under New Jersey's Transfer Inheritance and/or Estate Tax or the Federal Estate Tax.

The New Jersey statute, N.J.S.A. 54:34-1(f) states, "The right of the surviving joint tenant or joint tenants, . . . to the immediate ownership or possession and enjoyment of real . . . property held in the joint names of two or more persons . . . shall upon the death of one of such persons, ***be deemed a transfer taxable in the same manner as though such property had belonged absolutely to the deceased joint tenant . . . and had been devised or bequeathed by his will to the surviving joint tenant or joint tenants . . .***"

The Federal statute, 26 U.S.C.A. 2040(a) provides, "***The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person . . .***" (The federal law goes on to exclude tenancies by the entireties.)

Both the State and Federal statutes allow the surviving Joint Tenant the right to prove that he or she contributed to the purchase of the real property and to have that amount declared non taxable. This does not change our position that inheritance/estate taxes must be satisfactorily addressed.

Accordingly, any title commitment issued to insure a mortgage or conveyance by a surviving joint tenant must take exception to Federal and State Inheritance and Estate Taxes.

As always, any questions should be addressed to a member of our underwriting staff.