

LTA – 2012/052 – Draft suggestions

Rule 462.040 – CHANGE IN OWNERSHIP – JOINT TENANCIES.

Example 4-1 5: A and B purchase property as joint tenants. ~~Later~~ On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, 37 considered to be "original transferors." If A and B had transferred their interests into trust ~~one day on any date~~ after the effective date of the amendments adding this sentence, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an 40 "original transferor" as a result of the transfer into trust. [To make sure that there is no misunderstanding in case there is a transfer two days after the effective date.]

Example 6 7: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the spouse of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.") [Just to clarify why E becomes an original transferor, and to match the identifier in Example 9.]

Example 7-2 9: A transfers to A and B as joint tenants. A is an "original transferor" and B." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he was the spouse registered domestic partner of an "original transferor." and he acquired an interest by means of a transfer from A. B is an "original transferor" because he is a transferor who is among the transferees. [If B is not also identified as an "original transferor," it implies he did not become an "original transferor."]

Example 7-3 10: A and B transfers to A and B as joint tenants. A is an "original transferor, and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A. [I think including B in the first sentence was just a typing error. However, to stay consistent, the example should identify both those that are "original transferors" and those who are "other than original transferors." In fact, this example should include which B is after the transfer. Would B be an "original transferor" or "other than original transferor?"]

Example 9 12: A and B purchase property as joint tenants, and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors." On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing A, B, C, and D as joint tenants. A and B become "original transferors." C and D become "other than original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to each other [wouldn't just C and D having interests transfer to each other sever the joint tenancy? Don't they need to include A and B as beneficiaries of their trusts to become "original transferors?"] through their trusts, so that both become "original

transferors". " On January 13, 2004, A and B then sell their remaining 50% percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers to each other.

Example-10 13: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors." C and D are "other than "original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. [To maintain consistency in identifying who are "original transferors" and who are "other than original transferors."]

Example 11 14: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors." C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal, [isn't it actually C's and D's interests that were previously excluded from reappraisal?] and B was the last surviving "original transferor."