



# Joint tenancy and unsecured creditors



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Although the focus of our article series is on real estate law in Ontario, many areas of legal practice will eventually overlap to some extent. This article will examine one of those situations.

As we have discussed in a previous article, when two or more people purchase a property together, they must decide on the capacity of ownership interest that they would like to have. This is known as the legal tenure. The two types of legal tenure relating to multiple owners are joint tenancy and tenants in common.

When two or more people own a property together as joint tenants, there exists a right of survivorship. The

effect of the right of survivorship is that when one of the joint tenants dies, their entire interest in the jointly held property automatically passes to the surviving joint tenant or tenants. Since the ownership interest of the deceased joint tenant automatically passes to the survivor(s), it does not form part of the estate of the deceased.

This has significant implications in estate planning, and the effects of this are also important to be aware of for the surviving joint tenant(s). For example, the situation may arise where a person's only asset is the house they own, but they have a large amount of unsecured per-

sonal debt such as credit card debt. If this person dies, can a sale of the house be forced in order to satisfy these credit card debts? If the home is owned in joint tenancy, the short answer is "no", because ownership of the home will automatically pass to the surviving joint tenant(s). Payment of these debts becomes an obligation of the estate of the deceased (assuming they were not joint or guaranteed debts), and through the right of survivorship in joint tenancy, the house does not form part of the estate of the deceased.

However, it is important to be aware that the right of survivorship in joint tenancy has been challenged by unpaid creditors up to the level of the Supreme Court of Canada. The principle that has come out of these decisions is that an unsecured creditor may challenge a joint tenancy on the basis that the surviving joint

tenant(s) are simply holding the property by what is known as a "resulting trust" for the estate of the deceased. In other words, the joint ten-

ancy was created purely as an estate planning tool. If the joint owners are not married spouses, the presumption of a resulting trust can be

engaged by a creditor, placing the onus in the surviving joint tenant(s) to rebut this presumption. It is the intention of the deceased in creating the joint tenancy that the Court will focus on in reaching a decision in these cases.

In situations where there are multiple owners, the potential consequences of owning property as joint tenants or as tenants in common should be discussed fully with both legal and financial professionals. In doing so it is important to remember that what may appear to be simply a "property" or "real estate" decision can have a significant legal impact in other areas.

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## RENTAL GUIDE

# What you need to know about carbon monoxide detectors

**BY DICKIE & LYMAN LLP**

Who practice landlord/tenant law and other areas of law

**Q: The Rental Guide on holiday safety was informative, but it should have included reference to carbon monoxide detectors, which are now required by law, in the section dealing with smoke detectors.**

**A:** Carbon monoxide (CO) detectors are indeed required by law in many homes and rental units in Ontario, but not in all homes or in all rental units.

Under provincial law, all residential buildings require one

or more CSA-approved carbon monoxide detectors if the building contains a fireplace, an attached garage intended for the parking or storage of motor vehicles, or any kind of fuel-burning appliance. Fuel-burning appliances include oil- or gas-burning furnaces, wood- or gas-burning stoves or clothes dryers, gas-powered refrigerators, gasoline or diesel engines or kerosene heaters.

When there is a fuel-burning appliance or fireplace in a dwelling unit itself, a detector must be installed in the dwelling adjacent to each sleeping area.

If a fuel-burning appliance is located in a building serv-

ice room, a detector must be installed in the service room AND adjacent to each sleeping area in all suites that have a common wall or floor/ceiling assembly with the service room.

If there is a garage in the building, a detector must be installed adjacent to each sleeping area in all suites that have a common wall or floor/ceiling assembly with the garage.

If there are bedrooms in two different areas, such as both upstairs and in the basement, then an alarm is required adjacent to each sleeping area. The alarm must make sufficient noise to wake people through-

out the sleeping area even though any doors in the sleeping area are closed.

The alarm is to be "mechanically fixed, attached, plugged in or placed at the manufacturer's recommended height or, if the manufacturer has not recommended a height, on or near the ceiling." Different heights will work because carbon monoxide is very close in weight to ordinary air.

The CO alarm should not be in a corner or hidden behind furniture or drapes. Ideally, the alarm should be between the fuel burning appliance and the sleeping area.

Other rules about CO alarms:

CO alarms shall:

- be permanently connected to an electrical circuit with no disconnect switch between the over-current device and the carbon monoxide alarm,
  - be battery-operated, OR
  - be plugged into an electrical receptacle.
- Landlords are required to test CO alarms (and smoke alarms) in rental units:
- annually
  - when the battery is replaced
  - when changes are made to the electric circuit, and
  - when a new tenant moves in.

The required test is to activate the alarm testing feature.

The landlord is required to provide the CO detector (and smoke alarm) maintenance instructions to the tenant. To do that, the landlord should provide the tenant a copy of the instructions so that the landlord keeps the original instructions to make further copies for future tenants.

On their part, tenants are required to notify the landlord if a CO alarm or smoke alarm is inoperable. Tenants are prohibited from disabling CO alarms or smoke alarms. CO alarms do not function as smoke detectors, nor vice versa, but some devices are now designed to function as both alarms.