



Death of a Joint Tenant is not a Transfer of Ownership

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A recent Michigan Court of Appeals decision further explained the meaning of "transfer of ownership" within the context of a joint tenancy. In *Klooster v City of Charlevoix*, No. 00-323883, 2009 WL 4824971, at *1 (Mich App Dec 15, 2009), the court addressed the issue of whether the death of a joint tenant constitutes a "transfer of ownership," thereby allowing the city to "uncap" the property's taxable value. The court held that the death of one joint tenant in a joint tenancy does not result in a transfer of ownership for taxable value purposes under MCL 211.27a and MCL 211.34d; therefore, the city erred when it uncapped the property's value.

In *Klooster*, petitioner's parents held property as tenants by the entirety until petitioner's mother quitclaimed her interest to petitioner's father. On that same day, petitioner's father quitclaimed the property to himself and petitioner as joint tenants with rights of survivorship. Petitioner's father subsequently died, and eight months later, petitioner created a joint tenancy with rights of survivorship with his brother. The city uncapped the taxable value of the property, arguing that the death of petitioner's father caused the transfer of ownership. The Michigan Tax Tribunal concluded that the taxable value of the property should be uncapped since a transfer of ownership occurred. Petitioner argued that his father's death did not constitute a transfer of ownership under MCL 211.27a(7)(h) and appealed.

In its analysis, the Michigan Court of Appeals referenced the *Moshier* holding that a transfer between two or more persons that creates or terminates a joint tenancy will not constitute a "transfer of ownership" and thus triggers the statutory exemption if:

"(1) at least 1 of the persons involved in the transfer was an original owner of the property before the tenancy was initially created and, if the property was held as a joint tenancy at the time of the transfer,

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(2) 'at least 1 of the persons' involved in the transfer was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time." *Moshier v Whitewater Twp*, 277 Mich App 403; 745 NW2d 523 (2008).

Because petitioner's father was the original owner of the property before the joint tenancy was created, "at least 1 of the persons involved in the transfer was an original owner of the property before the tenancy was created." MCL 211.27a(7)(h). The *Klooster* Court referred to the second prong as a "conditional requirement" that "need only be met in instances where the property was held as a joint tenancy at the time of the conveyance." Contrary to the city's argument, the Michigan Court of Appeals determined that a joint tenant's death was not a conveyance within the meaning of MCL 211.27(7)(h); therefore, the second requirement was not applicable to *Klooster's* case. In its analysis, the court reviewed the meaning of "conveyance" as defined by Black's Law Dictionary (8th ed) and concluded that a conveyance "requires that there be some instrument in writing affecting the title of the real property." The death of petitioner's father did not create a conveyance because "no instrument in writing was created that affected title to the subject real estate." Therefore, the taxable value of the property should not have been uncapped under MCL 211.27a(3).