

FORMS OF LAWFUL POSSESSION

(ways to hold interests in land)

Lawful Possession Default

If the Band members do not indicate on a Transfer and there is no agreement signed as to the manner in which they want to hold the property at the time the lawful possession of reserve land is acquired (e.g., silent on the instrument), the interest will be recorded as being held as Tenants in Common.



OALA ESTATES UNIT

©2022 Prepared by OALA Estates Unit. Not intended to provide legal advice. For more Estates related information please visit our website at

www.oala-on.ca

Joint Tenancy

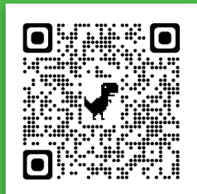
Joint Tenancy is a form of lawful possession of reserve land in which two or more band members jointly hold equal undivided shares in the whole of a parcel of reserve land.

The distinguishing feature of an interest held in Joint Tenancy is that, upon the death of one Joint Tenant the deceased's interest in the land passes to the surviving Joint Tenant(s) by the right of survivorship.

Tenancy in Common

Tenancy in Common is a form of lawful possession of reserve land in which two or more Band members, or one or more Band members and the Band itself, hold reserve land in equal or unequal undivided shares. Unlike Joint Tenancy, Tenancy in Common has no right of survivorship. Therefore, upon the death of one of the tenants in common, the deceased's interest in the land passes to the deceased's estate or heirs.

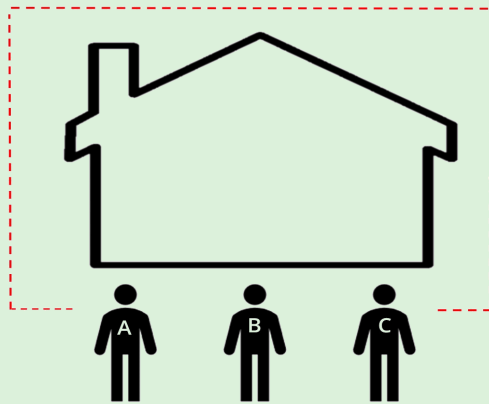
This information has been extracted from the **INDIAN LANDS REGISTRATION MANUAL**, October 12, 2017. The registration manual can be found online here. 



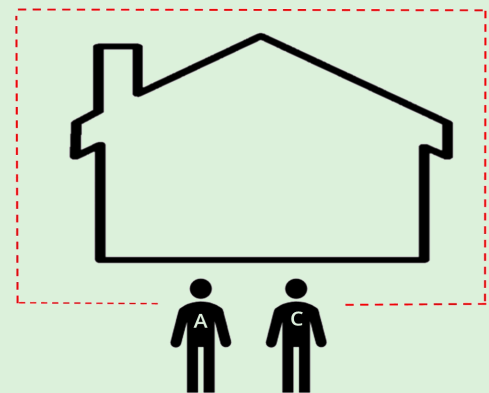
JOINT TENANCY

VS.

TENANCY IN COMMON

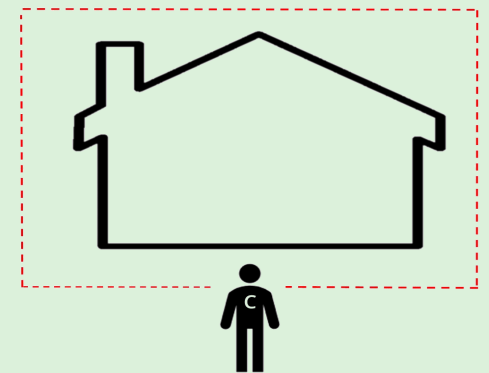


A, B & C band members jointly hold an equal undivided share in the property. I.e., they all own 100%. Each tenant has equal right to make use of and enjoy the entire property.

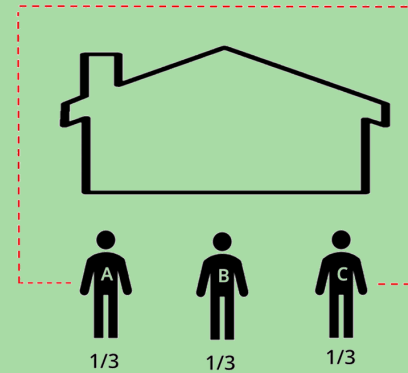


If lawful possessor B passes away, A & C acquire B's portion of the interest.

Note: This is what is meant by right of survivorship. The remaining survivors assume the interest of the deceased.



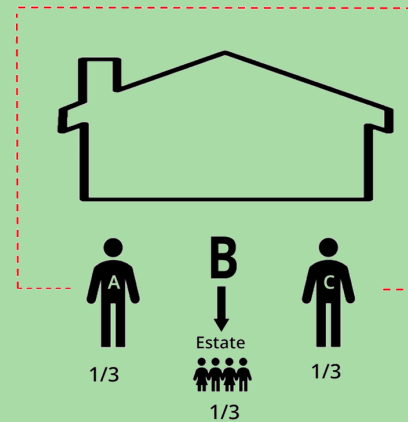
If lawful possessor A now passes away, C acquires all of the interest.
"last person standing"



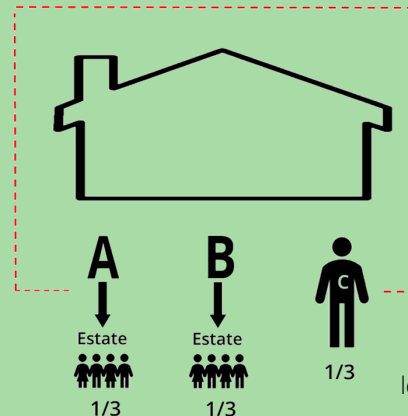
A, B & C band members each hold a 1/3 or 33.33...% undivided interest in the property.

Note: Even though each band member holds a 1/3 interest, it is considered an undivided interest, which means, each tenant has equal right to make use of and enjoy the entire property.

The percentage or fraction becomes important when the division of proceeds from a sale or generated revenues (such as lease fees) need to be calculated and divided.



If lawful possessor B passes away, their interest is passed along to their rightful heirs or beneficiaries through the administration of their estate.



If lawful possessor A now passes away, their interest is also passed along to their rightful heirs or beneficiaries through the administration of their estate.

Note: Tenants in Common is the default type of tenancy if your instrument (transfer, lease etc.) does not specify a type of tenancy.