

Title

FREQUENTLY ASKED ^ QUESTIONS

February 2010

Title is vested in two unrelated people as tenants in common. They subsequently marry. Does the tenancy in common automatically convert into a tenancy by the entirety?

No.

N.J.S.A. 46:3-17.2 states, “A tenancy by the entirety shall be created when ... a husband and wife together take title to an interest in real property ... under a written instrument designating both of their names as husband and wife ...”

The key statutory requirement to create a tenancy by the entirety is that the grantees be “husband and wife” (or a civil union couple) at the time they take title. (There is case law that indicates that a tenancy by the entirety is created when a married couple takes title even if the deed does not on its face identify them as “husband and wife” or “married”, but that is not relevant to the present inquiry.)

If the couple wishes to establish a tenancy by the entirety after they marry, they will need to record a deed from themselves to themselves as “husband and wife” or “married”.