



# THE ENFORCER

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## Property Held as Tenancy by the Entireties

Shockingly, your client's ex-spouse is not meeting his support obligations under the Judgment of Divorce. With judgment in hand, you immediately look to any real property he owns. Unfortunately, you learn that the ex-spouse is already re-married and holds his home in tenancy by the entireties with his new spouse. A further search of his assets reveals that the ex-spouse has a money market account with a significant balance. However, before you contact the broker, you should consider that the ex-spouse may be protected from attachment by a little known but extremely important part of Michigan law.

### ***What is entireties property and what does it mean with regard to collection of a debt?***

Under Michigan law, all real property that is obtained by a husband and wife together is presumed to be exempt from a claim by a creditor based upon a debt incurred by only one of the spouses.<sup>1</sup> For example, where a husband and wife hold the marital home as tenants by the entireties, a creditor of the husband may not seek to satisfy that debt against the home.<sup>2</sup> The granting language necessary to create an entireties estate is simple: To A and B, Husband and Wife.

While often overlooked, the same rule is applicable to certain kinds of personal property as well. MCL §557.151 provides a presumption that, "bonds, certificates of stock, mortgages, promissory notes, debentures or other evidences of indebtedness," that are held by a husband and wife are held as tenancy by the entireties. Accordingly, the same protection that spouses receive with regard to the real property would also apply to personalty such as a savings or a money market account.

### ***Determining Whether the Property is Held in Tenancy by the Entireties***

The first determination to be made with regard to entireties property is to find out whether the husband and wife were

actually married *when the property was acquired*. With regard to real property, an engaged couple that purchases a home in anticipation of their marriage does not hold the home as tenants by the entireties even when they eventually marry. Instead, the now husband and wife must actually re-convey the property to ensure that it is held in tenancy by the entireties. The same is true for personal property under §557.151. An unmarried couple with a joint savings account or money market account would have to close the account and reopen it once they were married to ensure that the account is held in tenancy by the entireties.

Second, the law allows a husband and wife to elect not to hold property as tenants by the entireties but rather as joint tenants. Thus, before seeking to satisfy a debt you should also determine whether there is language in the deed or deposit book that evidences the husband and wife's intent not to create a tenancy by the entireties. The Supreme Court has held on several occasions that the presumption of tenancy by the entireties may be overcome only, "if explicitly so stated."<sup>3</sup>

Based upon several decisions by the Michigan Supreme Court "explicitly stated" requires more than merely writing "as joint tenants" on the conveying instrument. Because a tenancy by the entireties is actually a form of a joint tenancy, courts will usually find that the presumption of a tenancy by the entireties is not overcome unless the documentation specifically provides that it is, "not held as tenancy by the entireties."<sup>4</sup> Even where the husband wife check a box indicating that the account is held in joint tenancy a tenancy by the entireties is presumed to exist.<sup>5</sup>

### ***Attaching Personal Property Held by a Husband and Wife***

In attempting to collect for your client, first ensure that the delineated real property that the ex-spouse holds with his or her new spouse is not held by the entireties. This requires that you consider whether the ex-spouse and his or her new husband or wife were actually married when the property was acquired or the account was opened. Recall, that for



the account to be considered to be held as tenants by the entireties the husband and wife must actually be married. Thus, regardless of language such as "Husband and Wife" in the accompanying documentation, a tenancy by the entireties is not created, absent marriage. If the account was opened prior to marriage, and the marriage took place thereafter a tenancy by the entireties would only be created if the account was closed and reopened.

As such, do not assume that real or personal property listed in MCL 557.151 is automatically held in tenancy by the entireties and exempt from attachment. While the presumption that such an estate is created is quite strong and hard to overcome, the fact that many people are not aware that such an arrangement applies to certain forms of personal property is perhaps your best friend.

## Endnotes

1. MCL §554.44, 554.45.
2. The protection afforded entireties property from the creditors of one spouse does not apply to the Internal Revenue Service where only one spouse has federal income tax obligations. See *US v. Craft*, 535 U.S.274, 122 S.Ct. 1414 (2002).
3. See *Hoyt v. Winstanley*, 221 Mich. 515, 191 N.W. 213 (1922).
4. See *DeYoung v. Mesler*, 373 Mich. 499, 503-504, 130 N.W.2d 38 (1964).
5. See *Zavradinos v. JTRB, Inc.*, 482 Mich. 858, 753 N.W.2d 60 (2008).

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