

**Real Estate—Taxation—Tenants in Common—Assessment
—Redemption—Sales.**

The individual interests of tenants in common of real estate may be separately assessed to the owners. Assessment to one or all of them jointly without designating each owner's individual interest is valid after the property has been sold and is sufficient to sustain the same.

If a separate interest has been assessed all that could be sold would be the separate interest and the person whose interest has been sold may redeem the same whether his co-owners redeem their interests or not. No redemption can be made of an undivided interest where that undivided interest was not separately assessed.

S. J. Rigney, Esq.,
County Attorney,
Cut Bank, Montana.

May 18, 1929.

My dear Mr. Rigney:

You have requested an opinion relative to several questions concerning the taxation of real property, which will be taken up in the following manner:

1. Should real estate owned by tenants in common be assessed to one or all of the owners jointly, or should each owner be assessed with his undivided interest?

Section 2191 R.C.M. 1921 as amended by Chapter 46, Laws of 1923, recognizes that an undivided interest may be assessed in that it provides that upon a tax sale the owner or person in possession of the land may designate the portion of the undivided interest he wishes sold if the undivided interest has been assessed. A similar statute has been given that effect by judicial interpretation. (*Hanley v. Federal M. & E. Co.*, 235 Fed. 769).

Our Supreme Court has also held that an assessment of the property owned by tenants in common to one of them with the addition "et al" to be a sufficient assessment to pass title to the property where the taxes imposed were allowed to become delinquent and the property sold at a tax sale. (*Cullen v. Western etc. Title Co.*, 47 Mont. 514).

It is therefore my opinion as to this question that the tenants in common may be severally assessed with their individual interests or if the property is assessed to one or all of them jointly without designating each owner's individual interest, and the property has been sold, that such an assessment is sufficient to sustain the sale.

2. Where each tenant in common has been assessed with his separate interest and these interests have been sold at a tax sale, may one or any number less than the whole number of tenants redeem their particular interest or interests?

Of course, if a separate interest was assessed then all that could be sold would be the separate interest in the property and the person whose interest has been sold may redeem the same regardless of whether the other co-owners redeem or not. A redemption by one owner would save his interest in the property from passing to the purchaser.

3. Where the land has been assessed to one of the tenants in common or to all of them without specifying their respective interests, may one co-tenant redeem from the sale his undivided interest without redeeming the whole of the land from the sale?

The general rule is that in the absence of statute permitting it, no redemption can be made of an undivided interest in land where such undivided interest was not separately assessed. I am unable to find any applicable statute in Montana allowing a redemption of this sort. A co-tenant may redeem the land from the sale by paying the whole amount due and necessary for a redemption and he can compel contribution from

his co-tenants for their share of the amount so paid and enforce the payment thereof from the land.

Very truly yours,

L. A. FOOT,
Attorney General.

By L. V. Ketter, First Assistant.