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How to Take Title to Real Estate

What does the question “how should I take title to my real estate” even mean? Why is it important? What kind of options do you have?

If you look at a deed, the sellers and buyers are named, and then the names are followed certain words or abbreviations that have legal significance. The words after the names could be “husband and wife” (also abbreviated as H/W), or “joint tenant with right of survivorship” (abbreviated as JTWROS), or “tenants in common.” Each of those phrases means something in law that could affect your rights as an owner. You should know what they mean.

If you are buying real estate with another person (or your lender insists on someone who is co-signing your loan being on the title), you have the choice of a “tenancy in common” or a “joint tenancy with right of survivorship.” If you are tenants in common with another person or several persons, each person owns a separate percentage of the property. The percentages do not need to be equal. For example, two people can own the same property together, but one person may have a 75% interest and the other person has a 25% interest. When you are choosing a tenancy in common, you tell your lawyer what percentage of ownership each person will have. If nothing specific is stated, each person owns half. When one person dies, his share goes to whoever he has named in his will (or if there is no will, according to the New Jersey law of intestacy). Any tenant in common can sell his interest to a third party without needing the consent of anyone else. All tenants in common have the right to possess the property (and live in the house) and cannot exclude any other owner. This type of ownership is commonly created when siblings inherit property from a parent or when unrelated people are buying a house together.

The other form of ownership that is commonly used is “joint tenants with right of survivorship.” Each person who owns that property automatically owns an equal percentage with the other owners. All of the owners must take title at the same time, must take title on the same deed, and have the same right to occupy the property. If one owner sells his interest, the joint tenancy is broken and a tenancy in common is created with the new owner together with the old owners. With a joint tenancy, when one owner dies, his interest automatically goes to the other owner(s), regardless of what is in his will.

For most married couples who are buying their dream home together, the answer of how to take title is usually simple. They take title as “husband and wife” which is a joint tenancy allowed only for married couples. When one spouse dies, the other spouse automatically inherits the entire property.

If your name is not on the deed, you have no ownership interest at all, no automatic right to inherit the property, and no rights to any proceeds when the property is sold.

It is important to discuss how you will take title with your lawyer. Each option has benefits and problems that you should be aware of before you get to the closing.