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How To Hold Title To Your Home

People buying a home have many issues to consider, including price, location, the home's condition and how it will be financed. An important issue many buyers give little thought to is how to take title to the home. But this decision is vital as it affects many issues, including who can sign documents regarding the property, whether creditors will be able to reach it and how the property will be transferred in case of death. Here are some common ways to hold title to a home or other real estate.

Sole Ownership

This is how an individual holds title to property. A deed may say: "Jane Smith, an individual person, as sole owner." It means one person owns the property alone. This ownership form does not apply to property bought by married couples. However, if a married couple wants to put title in the name of one spouse, the deed could say the spouse is taking title as his or her "sole and separate property." When a married person takes title as sole owner, the spouse usually must consent to this and give up all rights in the property by a quitclaim deed or other written agreement.

A sole owner is free to transfer the property as he or she desires, and when the sole owner dies, the property passes by the person's will.

Co-Ownership

There are several different ways people who are acquiring property together can take title, including:

- **Community property.** For husbands and wives in "community property" states, this is one of the main ways the couple can hold property. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. In these states, if a married couple acquires property and the deed says they are husband and wife, or is not clear about how they intend to hold title, the

law presumes it is held as community property.

When a couple holds title to real estate as community property, each spouse owns an equal interest in the property and each has equal management and control of it. Both spouses need to sign an agreement to transfer or sell the property. When a spouse dies, his or her half interest passes by will to heirs. The other half belongs to the surviving spouse.

Some community property states now allow an ownership form called “community property with right of survivorship.” In this way of holding title, when a spouse dies, the other spouse becomes owner of the entire property.

- **Joint tenancy.** Available in almost every state, this ownership form is an option when two or more co-owners each have an equal share of the property. The deed must say title is taken as “joint tenants,” and the owners must take title at the same time. Each joint tenant has an equal right of possession, meaning none can exclude the others from it or claim a certain portion belongs to him or her.

A joint tenant can usually sell his or her interest in the property without the consent of the other owners. If there are only two joint tenants and one sells his or her interest, a tenancy in common is created (see below). If there are three or more owners, the joint tenancy interest ends for the interest sold, but stays in effect for the remaining interests.

The most important characteristic of joint tenancy is that when a co-owner dies, his or her ownership interest goes to the other co-owners. Ownership passes by law, not by a will. As a result of this feature, called “right of survivorship,” eventually the last surviving joint tenant will own the entire property. If two people own property and they want a comparatively easy way for the other person to receive their interest upon death, joint tenancy is an ownership form to consider. This is because the transfer of the deceased person's interest occurs outside of probate court, thereby avoiding the delays and expenses of probate (usually, the surviving joint tenant only has to file with government entities a few documents to establish full ownership).

If a co-owner of property wants to be able to give away his or her interest by a will, joint tenancy would not be a good way to hold title.

- **Tenants in common.** Tenants in common are also co-owners of property. Unlike joint tenancy, however, interests of tenants in common do not have to be equal. For example, if three people own property as tenants in common, one person may have a 25% interest, another person a 35% interest and the third person a 40% interest. Each co-owner has an equal right of possession, and each can convey his or her interest without the consent of the other owners. As with joint tenants, a creditor can usually

seize a co-owner's interest to satisfy a debt of that person.

Any tenant in common is free to sell his or her interest. If one tenant wants to sell the entire property and the others don't, the person can force a sale by filing in court a "partition action."

Unlike joint tenants, tenants in common can pass their interest by a will to whomever they want. If two or more people own property and each wants to be able to give away his or her interest by will, they should consider holding title as tenants in common.

- **Tenants by the entirety.** Many non-community property states let couples hold title as "tenants by the entirety" (in most states, the couple must be married). Both spouses again have equal interests in the property and any sale requires both to agree. Like "community property with right of survivorship," if a spouse dies the surviving spouse becomes sole owner of the entire property. In some states, the only type of property that can be held as tenants by the entirety is real property.

Tenants by the entirety offers a key benefit over other forms of joint ownership -- in most states, creditors usually cannot seize the portion of the property owned by the debtor spouse to pay off that person's debt (though the Supreme Court recently allowed a tax lien to apply to the interest of a person who owned property as tenants by the entirety).

How title is held has important tax, estate and other consequences. If you are acquiring a home or other real estate, our law firm can help you select the best way to hold title. We can also advise existing property owners if the way they currently hold title is the form that will best help you achieve your estate planning goals, or whether the form in which title is held should be changed.

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