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Are All Your Assets Held In The Proper Title?

Like most people, you probably own different kinds of property, acquired at different times in your life. Maybe you bought some stocks when you were single. With a spouse you opened a joint bank account and bought a home. When kids arrived you bought life insurance. Maybe you inherited property from a relative. At work, you are building value in a retirement plan. You likely own a car as well. As a result, you own many different types of assets.

A question that's easy to overlook is: how should title to these assets be held? Should the records list them as owned by you and your spouse? Do you own the properties as joint tenants, tenants in common or as community property? The answers are very important as they affect what happens to the property if you separate or divorce, who gets the property when you die, and who has power to make decisions about the property.

Here are some of the most common ways to hold title to real and personal property:

Sole Ownership

Property you own alone should be identified as "sole and separate property." This is property you are sole owner of because you acquired it before marriage, received it under someone's will or acquired it with money that was your sole property. You have total control over it and can decide what to do with it. If you marry and later divorce, your spouse cannot claim to own it as long as you kept it separate.

Tenants In Common

There are several ways to hold title to property you own with someone else. The main choices are as "tenants in common," "joint tenants" or "community property."

When property is held as “tenants in common,” each co-owner controls the interest in what he or she owns. The interest owned by each tenant in common does not have to be equal. For example, one owner might own a 50% interest, another owner a 30% interest and a third owner a 20% interest.

Each “tenant in common” can transfer his or her ownership interest to someone else without consent of the other co-owners. As a result, tenants in common can end up owning the property with someone they don't know or someone they don't want to be part of their ownership group.

A key benefit of holding property as "tenants in common" is that each tenant in common can pass his or her interest by will. If the person dies without a will, his or her share will go to heirs according to state law. Because a tenant in common's ownership interest passes by a will, it is therefore subject to the costs and delays of probate court.

Joint Tenancy

"Joint tenancy" is a different way to hold title to property. In a joint tenancy, all co-owners take title at the same time, and all own the same percentage interest in the property. Each co-owner has equal rights and responsibilities for the whole property.

For a sale or transfer of the property to occur, all of the co-owners must agree. If one joint tenant wants to sell but the others don't, a lawsuit can be brought (this is also the case with tenants in common). A court can then order the property sold, with the proceeds going to the joint tenants according to their ownership interest.

When one joint tenant dies, his or her interest automatically goes to the surviving joint tenants, not to the heirs of the person who died. So the last joint tenant to survive ends up owning the entire property. Because of this, joint tenancy is often used as an efficient way to avoid probate, since the transfer of ownership occurs outside of probate court.

Whether or not a joint tenant can transfer his or her interest usually depends on the agreement between the joint tenants. If there are only two joint tenants and one sells his or her interest, the joint tenancy is ended, and a tenancy in common is created.

Community Property

Nine states recognize the concept of community property for married couples: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin. “Community property” ownership means the spouses’ interests are equal. Both must consent for the property to be transferred. When one spouse dies, the survivor keeps his or her half of the community property interest. The half interest of

the person who died goes to that person's heirs.

Some community property states now allow an ownership form called "community property with right of survivorship." In this case, when a spouse dies the other spouse becomes owner of the entire property.

Tenants By The Entireties

Many non-community property states let couples hold title as "tenants by the entireties." 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. Some states limit the type of property that can be held as tenants by the entireties to only real property.

How you hold title to property is crucial, as it affects your ability to control the property, taxes and what happens to your share of the property when you die. It is important to remember that how title is held, and not your wishes in a will, determines what happens to the property when you die. Because the manner in which title is held is such an important issue, it is best to call our law firm about how to hold title on deeds, ownership certificates and other property records.

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