

OVERVIEW OF THE DIFFERENT WAYS TO HOLD TITLE TO REAL ESTATE

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Did you know that there are multiple ways in which you can hold title to real estate? For first time homebuyers, especially couples- both married and unmarried, deciding how to take title to their new home can be confusing. Not only that, but small variants in the words used in a deed can have far-reaching consequences for each person should something happen to the co-owner. That's why it's important to know the major characteristics that differentiate the main ways to hold title to property.

Individually

This one is pretty self-explanatory. One person owns the real estate, and should something happen to them, the property would pass according to their estate plan, or if they had no estate plan, then according to the intestacy laws of the state in which the property is located. Disregarding homestead laws, this could have huge implications for some cohabitating couples. Take the following example:

Jack and Jill, an unmarried couple, have made the decision to live together. Even more significantly, they have decided to buy a nice two bed-room condo in the city. Jack, being self-employed for only a few years has trouble qualifying for a loan, so Jill applies, and is approved for funding on her own. She then purchases the condo for both of them to live in together with the understanding that it belongs to both of them.

Fast forward a year, and Jill is killed in a tragic car accident. Jack, distraught, finds out that Jill didn't have a will, or any estate planning for that matter. As her estate moves through probate, he finds out that under the intestacy laws of their state, property belonging to individuals who die without a will goes to their siblings by law. Not good for Jack.

Since Jack and Jill were not married, Jill had no estate planning done, and she owned the condo by herself, it is now the legal property of her siblings as tenants in common, and not Jack. It's doubtful that is what anyone wanted, even Jill's siblings, but it illustrated the dangers of owning real estate and not appropriately planning for what may happen should the owner die.

Tenancy in Common

Tenancy in common is a way for two or more people to hold title to property. As tenants in common, individual owners may own any percentage of the property. For example, Jill's three brothers in the above example would own the property 1/3, 1/3 and 1/3. But, say that one of her brothers, Jeff, decides that he'd like to gift his portion of the property to his two kids, who split Jeff's interest 50/50. Now, the property is owned 1/3 by brother 1, 1/3 by brother 2, and 1/6 by each of Jeff's kids.

Even though the owners all own different percentages of the property, all are allowed to use the entire property. That means that all of them are free to enjoy weekend getaways at the city condo without having to obtain permission from the other owners.

An interest in real estate held as a tenant in common is freely transferrable, whether by gift or sale during life, or by bequest upon death. A nice feature, no doubt; however, it can also have some negative consequences. For example, say that one of Jeff's kids sells his 1/6 interest in the condo to a friend from college. The friend, like the rest of the owners, is now allowed to use that condo without approval of the other owners. A potential problem since he has a tendency to throw wild parties and isn't exactly a clean individual.

All of a sudden, the consequence of holding the property as tenants in common is that the other owners are forced to put up with this crazy college friend trashing the condo and building a negative reputation amongst the other condo owners in the building for all the noise complaints he receives.

Joint Tenancy

Similar to a tenancy by the entirety, a joint tenancy is a way for two or more individuals to hold a piece of property. In a joint tenancy, each individual holds an undivided interest in the property. The main differentiating feature of a joint tenancy over a tenancy by the entirety is that, upon the death of an owner, the deceased owner's interest in the property automatically passes to the other owners by operation of law. This feature, called a right of survivorship is extremely beneficial from an estate planning perspective, especially for unmarried co-owners of property who would otherwise not inherit from each other upon death.

So, in our example of Jack and Jill, a joint tenancy ownership of the condo could have prevented Jack from getting kicked out on the street upon Jill's death. Instead, even though Jill had no will, and the state intestacy laws said that her property passes to her siblings, the condo, help in joint tenancy with Jack would automatically go to Jack and Jack alone.

Tenancy by the Entirety

Like a joint tenancy, a tenancy by the entirety is a type of shared ownership. While most states recognize tenancies by the entirety, not all do. The important differentiating feature of a tenancy by the entirety is that it is only available to married couples (so, not Jack and Jill unless they tie the knot). Like a joint tenancy, an interest tenancy by the entirety passes automatically to a surviving spouse upon death of the other. Just as important, tenants by the entirety cannot transfer their interest in the property without the consent of each other.

Owning property with other individuals can carry significant consequences depending on how the property is titled. That's why it's important for all co-owners to research the potential ways title can be held and, if appropriate, discuss their situation with an attorney who can advise them on the potential benefits and drawbacks of taking title one way over another in their state.



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