

How To Hold Title To Real Property

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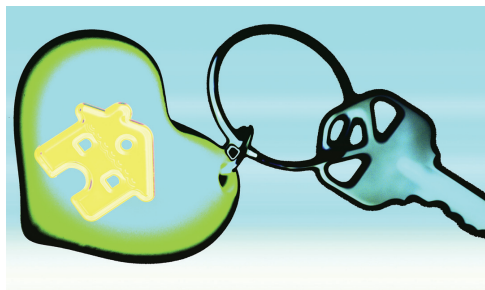
The form of ownership for real estate property should be given careful consideration, especially when there are multiple owners of a single property. How title is held will affect the buyers in a multitude of areas, including property taxes, income taxes, inheritance and gift taxes, as well as probate implications in the

event of death. The vesting of title also affects the transferability of title, exposure to creditor claims, and the disposition of assets in the case of divorce.

There are various options for holding title, depending on your specific situation.

Sole Ownership: Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common forms of sole ownership are:

1. **A Single Man/Woman:** A man or a woman who is not legally married.
2. **A Married Man/Woman as His/Her Sole and Separate Property:** A married man or woman who wishes to acquire title in his or her name



alone. The spouse of the married man/woman acquiring title will be required to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that it is the desire of both spouses that title to the property is granted to one spouse as that spouse's sole and separate property.

3. **A Domestic Partner as His/Her Sole and Separate Property:** A domestic partner who wishes to acquire title in his or her name alone. As in the situation above, the domestic partner of the person acquiring title will be required to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both domestic partners want title to the property to be granted to one partner as that person's sole and separate property.

Co-Ownership: Title to property owned by two or more persons may be vested in the following forms:

1. **Community Property:** This is a form of holding title to real property owned by husband and wife during their marriage, which they intend to own together. Community property is distinguished from separate property, which is property acquired before marriage, by separate gift or bequest, after legal separation, or which is agreed to be owned by one spouse. In California, real property conveyed to a married man or woman is presumed to be community property, unless otherwise stated. Since all such property is owned equally, husband and wife must sign all agreements and documents of transfer. When holding title as community property, either spouse has the right to dispose of one half of the community property, including transfers by will.

2. **Community Property with Right of Survivorship:** This is another form of holding title to real property owned by husband and wife during their marriage, which they intend to own together. This form of holding title shares many characteristics of community property but adds the benefit of the right of survivorship, similar to title held in joint tenancy. There may be tax benefits from holding title in this manner. This form of ownership must be created on or after July 1, 2001. When property is held in this manner, on the death of a spouse, the decedent's interest ends and the surviving spouse owns the property by right of survivorship.

3. **Joint Tenancy:** In this form of ownership, property is owned by two or more persons (who may or may not be married), each having an equal interest, and the property is subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy. When a joint tenant dies, title to the property is automatically conveyed by operation of law to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will.

4. **Tenancy in Common:** Tenancy in common is a form of holding title to property owned by any two or more individuals in undivided fractional interests. These fractional interests may be unequal in amount or duration and may arise at different times. Each tenant in common owns a share of the property, is entitled to a comparable portion of income from the property and must bear an equivalent share of expenses. Each co-tenant may sell, lease or will to his/her heir that share of the property belonging to him/her.

In addition, you may acquire property as a corporation, a partnership, a trust or an LLC (Limited Liability Company). You should consult with your legal counsel and financial professional when choosing among the options for holding title.

In summary, how title to real property is held has important legal, financial and tax consequences. When choosing a form of ownership, you should take into account your financial and family circumstances as well as long-term goals for holding real estate. You should also be aware that the options for ownership may be affected by the state where the property is located. Proper advance planning can save heartache and tax dollars down the road.

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