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FORMS OF PROPERTY OWNERSHIP

By Dorothy L. Korszen

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When you buy real property, you must decide how to "hold title," or take ownership of the property. With more than one buyer, there are four main ways a "natural person" (as opposed to a corporation, partnership or other entity), can own property. These are:

1. Joint Tenancy with Right of Survivorship

Joint tenancy, which allows property to be held between two or more individuals, is often used with parents and children, siblings, or sometimes business partners. Joint tenants equally share control and legal ownership of the property. Upon the death of the first joint tenant, the surviving tenants will receive equal portions of the deceased tenant's share of the property, and the deceased tenant has no interest to pass to his or her heirs. Therefore, joint tenancy limits control of the property after death. A joint tenancy may become a tenancy in common if one owner conveys his or her interest.

2. Tenancy by the Entirety

Tenancy by the entirety shares many of the characteristics of joint tenancy; however, only a husband and wife can hold property as tenants by the entirety, and ownership of property can be terminated only with the consent of both spouses. For married persons, this is the preferable way to hold title as this offers some protection from creditors' claims.

3. Tenancy in Common

In a tenancy in common, each owner controls an individual interest in the property. The amount of each individual's interests can vary but is usually proportionate to the number of owners. Each owner may sell, give away or dispose of their shares any way they want. This is limited because most buyers do not want to buy a portion of a property. Tenancy in common allows for control after death, because the owners can pass their share of the property to heirs.



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4. Living Trusts

Living Trusts are created to simplify estate planning and minimize the potential hassles of probate. Many different types of trusts exist, but one of the most flexible is a revocable living trust. After establishing a living trust, the grantor transfers title of certain assets, such as real property, to the trust. Because the assets are then held by the trustee rather than by the grantor, they generally do not need to go through probate. The terms of the trust document govern the disposition of the assets. Most revocable living trusts can be modified, amended or revoked at any time prior to the grantor's death. This means the grantor can have complete control over the assets and the terms of the trust during his or her life. The trust becomes irrevocable only after the grantor's death.

There are many issues to consider when deciding how to hold title, such as, transfer at death, homestead issues and estate planning. Your attorney can advise you on the best way to hold title to real property, based on your situation.

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