



Ways to Hold Title to Property

There are various ways you may hold title to real property. This newsletter will discuss several ways individuals and entities may hold title to real estate.

A. Ownership by Persons. With more than one owner, 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 married couple 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. Because the law is not settled on same sex marriages, a same sex couple may want to state that they are taking title as a tenancy by the entireties, i.e., husband and husband, and add that they are also taking title as joint tenants with rights of survivorship.
3. **Tenancy in Common.** With 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 his or her shares any way they want. Selling at full value is a challenge 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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Dorothy’s practice focuses on trusts and estates, real estate, and business and corporate law.

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4. **Living Trusts.** Many people establish a trust to simplify their estate planning and avoid the potential burdens and costs 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 Settlor (property owner) 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 person individually, they 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 Settlor's death as long as the Settlor is competent. This means the Settlor can have complete control over the assets and the terms of the trust during his or her life as long as they are of sound mind. The trust becomes irrevocable only after the Settlor's death.

B. Ownership by Entities. Often, people form entities in order to hold title to property. Creating an entity, such as a corporation, limited liability company or partnership, can provide asset protection for investment properties. However, you cannot claim a homestead exemption for property owned by an entity. Issues to consider when holding property in an entity are:

1. **Agreements among the owners;** e.g., operating agreement for an LLC, bylaws and shareholders agreements for a corporation.
2. **Financing:** lenders terms may vary if property will be owned by an entity; personal guarantees may be required.
3. **Insurance:** Premiums might be different if property is owned by an entity instead of persons.

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

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