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WHAT DOES “HOLDING TITLE” MEAN?

What Is a Property Title?

A property title in real estate is the legal framework that defines what an owner can do with their land and any structures on it. It is not a document; it is a concept used to establish a property owner’s “bundle of rights.”

Continued on next page

Continued from previous page

Bundle of Rights

The bundle of rights encompasses all the rights that come with being a property owner.

- Right to possess the property (Right of Possession)
- Right to use of the property (Right of Control)
- Right to enjoy the property how you wish (Right of Enjoyment)
- Right to sell, rent, or transfer ownership (Right of Disposition)
- Right to limit who can enter the property (Right of Exclusion)

What Are “Methods of Holding Title”?

“Methods of holding title” refers to the legal structure in which title to a real property is owned, documented, and transferred, outlining the responsibilities of the owners. It also creates a road map to the future, for example, what happens to the property after the owner dies.

Why Is the Method in Which You Hold Title Important?

The method of holding title has important legal consequences. It dictates who legally owns property and how that ownership is transferred upon death or sale, impacting legal rights, tax implications, and the ability to sell or transfer the property.

What Happens With a Property After the Owner Dies?

The method of how you hold title provides guidance to survivors about what should happen to the property after the owner dies. One overall goal of choosing the method of holding title is to avoid probate, which involves a court deciding how to transfer ownership after the current owners die. To avoid probate, it’s important to either give heirs with rights of survivorship title before you die or prepare a trust outlining your last wishes.

What to Consider When Choosing How to Hold Title

When deciding how to hold title to a property, it’s crucial to consider the relationship between owners, desired control, the potential for future inheritance issues, creditor protection, and tax implications. Different methods of holding title, such as sole ownership, joint tenancy, or tenancy in common, affect your rights to sell, refinance, and how the property is transferred upon death. It’s advisable to consult with an attorney to determine the best approach for your circumstances.

5 Common Methods of Holding Title

1. Sole Ownership

A sole owner holds title to a property in their name only, and owns all the rights and interest to the property. A married individual can hold title as “sole and separate” from a spouse, meaning the spouse doesn’t lay claim to ownership of the property.

If the sole owner dies, the property is passed on to the heirs listed in a will. If there’s no will, the home would be transferred according to state law.

2. Joint Tenancy With Right of Survivorship

Joint tenancy involves two or more individuals purchasing a property together, with each owning an equal portion.

This is often considered the best title vesting for most married couples, but it also applies to family members planning to own a property together. Joint tenancy with rights of survivorship gives each owner equal ownership rights that automatically pass on to the surviving owners when one owner dies.

3. Community Property

Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin are what’s known as community property states.

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In these states, any property obtained by one spouse during a marriage is considered to belong equally to both spouses. When it comes to homeownership, this means that both spouses hold title on the home as community property. Depending on individual state laws, this type of ownership may or may not include what's known as the "right of survivorship."

Right of survivorship means that when one owner dies, their ownership interest is automatically transferred to the living owner(s) without having to go through probate. For example, if a husband and wife own their home together and the husband dies, the wife will automatically become the sole owner of the home.

Without the right of survivorship, both spouses are free to will their share in the property to whomever they choose.

4. Tenancy in Common

Tenancy in common is a form of property ownership where two or more people own a property together, with each owning a distinct, undivided interest. This means each co-owner can sell or transfer their share without the consent of the other co-owners, and their share will pass to their heirs upon their death, rather than automatically going to the other co-owners.

You'll need to decide who gets the tax benefits of ownership and divvy up who pays what percentage of the annual property tax bill. Your local treasurer's office won't divide a property tax bill, and the IRS usually doesn't get involved in deciding who gets the tax write-offs related to homeownership.

When a tenant in common dies, property rights don't automatically go to the other owners. Instead, the rights pass on to the deceased owner's heirs or a probate court if there's no will.

5. Living Trust

A trust outlines what happens to the interest in the property if one trustor dies. Lenders require proof that the trust doesn't contain provisions that could affect their ability to foreclose on your home if you default on your mortgage.

Having a living trust clearly defines your intentions for what happens to your real estate after you die. While title vesting gives an indication of your wishes, a living trust provides clear, specific instructions to avoid confusion among heirs about handling property rights upon your death.

Please contact your Lawyers Title Representative for more information.

This information is deemed reliable but not guaranteed and is for information purposes only.



MONTHLY INDUSTRY TERMS

Assumption of Mortgage

An obligation undertaken by a new purchaser of land to be liable for payment of an existing note secured by a mortgage.

Personal Property

Any property which is not real property, e.g., money, savings accounts, appliances, cars, boats, etc.

Tenancy in Common

An undivided ownership in real estate by two or more persons, without right of survivorship – interests need not be equal.