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Common Ways of Holding Title

Source: California Land Title Association | www.clta.org

HOW SHOULD I TAKE OWNERSHIP OF THE PROPERTY I AM BUYING?

This important question is one California real property purchasers ask their real estate, escrow and title professionals every day. Unfortunately, though these professionals may identify the many methods of owning property, they may not recommend a specific form of ownership, as doing so would constitute practicing law.

Because real property has become increasingly more valuable, the question of how parties take ownership of their property has gained greater importance. The form of ownership taken—the vesting of title—will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights involve such matters as: real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Also, how title is vested can have significant probate implications in the event of death.

The California Land Title Association (CLTA) advises those purchasing real property to give careful consideration to the manner in which title will be held. Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.

The CLTA has provided the following definitions of common vestings as an informational overview only. Consumers should not rely on these as legal definitions. The Association urges real property purchasers to carefully consider their titling decision prior to closing, and to seek counsel should they be unfamiliar with the most suitable ownership choice for their particular situation.

COMMON METHODS OF HOLDING TITLE

Sole Ownership

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

1. A Single Man or Woman:

A man or woman who is not legally married or in a registered domestic partnership. For example: Bruce Buyer, a single man.

2. A Married Man or Woman as His or Her Sole and Separate Property:

A married man or woman who wishes to acquire title in his or her name alone.

The title company insuring title will require the spouse of the married man or woman acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both spouses want title to the property to be granted to one spouse as that spouse's sole and separate property. For example: Bruce Buyer, a married man, as his sole and separate property.

3. A Registered Domestic Partner as His or Her Sole and Separate Property:

A registered domestic partner who wishes to acquire title in his or her name alone.

The title company insuring title will require the domestic partner of the person acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both registered domestic partners want title to the property to be granted to one partner as that person's sole and separate property. For example: Bruce Buyer, a registered domestic partner, as his 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:

A form of vesting title to property owned together by husband and wife or by registered domestic partners. Community property is distinguished from separate property, which is property acquired before marriage or before a registered domestic partnership, by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse or registered domestic partner.

In California, real property conveyed to a married person, or to a registered domestic partner, is presumed to be community property, unless otherwise stated. Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property, by will. For example: Bruce Buyer and Barbara



Buyer, husband and wife, as community property.

2. Community Property with Right of Survivorship:

A form of vesting title to property owned together by husband and wife or by registered domestic partners. This form of holding title shares many of the 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 for holding title in this manner. On the death of an owner, the decedent's interest ends and the survivor owns the property. For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship.

3. Joint Tenancy:

A form of vesting title to property owned by two or more persons, who may or may not be married or registered domestic partners, in equal interests, 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 estate. 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. For example: Bruce Buyer, George Buyer, as joint tenants.

4. Tenancy in Common:

A form of vesting title to property owned by any two or more individuals in undivided fractional interests. These fractional interests may be unequal

in quantity 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 the 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. For example: Bruce Buyer, a single man, as to an undivided 3/4 interest and Penny Purchaser, a single woman, as to an undivided 1/4 interest, as tenants in common.

OTHER WAYS OF VESTING TITLE INCLUDE AS:

1. A Corporation*:

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

2. A Partnership*:

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

3. Trustees of a Trust*:

A Trust is an arrangement whereby legal title to property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries.

4. Limited Liability Companies (LLC)*:

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation its existence is separate from its owners.

*In cases of corporate, partnership, LLC or trust ownership - required documents may include corporate articles and bylaws, partnership agreements, LLC operating agreements and trust agreements and/or certificates.

Remember

How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.

Title Tips ---> What is a preliminary report?

A preliminary report is a report prepared before issuing a title policy. This report shows the ownership of a specific parcel of land, together with liens and encumbrances which will not be covered under a subsequent title insurance policy.

What role does a preliminary report play in the real estate process?

The report contains the conditions under which the title company will issue a particular type of title insurance policy. It lists title defects, liens and encumbrances which would be excluded from coverage if the requested title insurance policy were to be issued as of the date of the preliminary report.

A preliminary report provides the opportunity to seek the removal of items referenced in the report which are objectionable to the buyer prior to purchase.