

How to title real estate to meet your goals

Real estate purchasers often wonder how best to title and hold real estate. There are many options, and the best way depends on your circumstances and goals. The following discussion reviews some of the most common ways to own real estate.

1. Individually. An unmarried person may hold real estate in their own name, such as John Doe. While this is a simple solution, upon death the property would go through probate and be passed under a will or by intestacy if the owner had no will. To avoid probate, a single person could do a beneficiary deed (described below) or deed it to a trust. Adding children's names to the deed is not generally recommended because if the child files bankruptcy or gets sued, the property could be at risk.

2. Joint tenancy. This is a form of equal ownership between two or more people who own an undivided interest in the whole property. The wording used in a deed to create a joint tenancy is: "John Smith, Mary Jones and William Davis, as joint tenants with rights of survivorship and not as tenants in common." When one of the joint tenants dies, their share goes to the surviving two tenants. When the second joint tenant dies, the sole surviving tenant owns the whole property. While this method avoids probate until the death of the final tenant, it is not appropriate for

all situations.

3. Tenancy in common. With tenancy in common, each person owns an undivided interest in the whole estate. They do not have to hold equal interests, and when a tenant in common dies, the interest passes according to their will or by intestacy, but such interest must be probated. The wording to create a joint tenancy is: "John Smith, a single person and Mary Jones, a single person, as tenants in common." This form of ownership is primarily used when each party wants their interest to go to their heirs rather than the tenant in common. A limited liability company (discussed below) might be a better choice for such circumstances.

4. Tenancy by the entirety. A form of ownership reserved to married couples, each person owns the whole, so neither person can sell the property without the signature of the other. Creditors are unable to execute on a judgment by taking the real estate unless they have a judgment against both of the married persons. For this reason, it is generally the preferred form for married couples to use when taking title to real property. On the death of one married person, the survivor owns the whole interest alone.

5. Beneficiary deed. About half of the states, including Missouri, permit a single owner or multiple owners holding title as tenants by the entirety to name the



Stephen Aton

beneficiary of real property on the death of the sole owner or all multiple owners. These instruments, called beneficiary deeds, must be recorded in the county in which the property is located before the death of the owner or the last to die of multiple owners. A beneficiary deed avoids probate and passes title to real property directly to the beneficiary. It is an efficient and cost effective way to transfer real property. It is important to note that a beneficiary deed is revocable and gives the listed beneficiaries no rights to the property as long as one of the owners is living.

6. Partnerships. Under the Uniform Partnership Act, any estate in real property may be acquired in partnership name. The disadvantage of a general partnership is that all partners are liable for the debts and obligation of the partnership. As a result, this form of ownership has largely fallen out of favor. Limited partnerships are still sometimes used for real property because

at least the limited partners are protected from liability.

7. Limited liability company. Often referred to simply as an LLC, this has become the entity of choice for holding investment property. The entity has the simplicity of a general partnership with the advantage that owners are not responsible for the debts and obligations of the entity. A membership interest in an LLC also may be transferred using nonprobate transfer laws.

8. Trust. A revocable trust may be another effective way to hold real estate. The person that establishes the trust, called the grantor, usually serves as the initial trustee. Upon death or incapacity, the successor trustee can handle the property. A married couple will often title their personal residence to be held as tenants by the entirety but record a beneficiary deed to transfer the house into trust on the death of the second to die. In that manner, they avoid probate for the home.

When buying real estate, it is good to have a plan on how to title the property. Proper titling can avoid cost and delay in settling an estate and make it easier for beneficiaries to take title and manage the property.

Stephen Aton of Aton Law Firm is an estate planning and corporate law attorney. He can be reached at steve@atonlaw.com.