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## How Should You Take Title

1 message

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### How Should You Take Title?

If you are purchasing a property, you should carefully consider the manner in which you would like to take title prior to closing and advise the settlement agent of your choice.

The following are explanations of the most popular methods in which two or more people take title to real property:

#### **TENANTS IN COMMON:**

Two or more persons have taken title to a single piece of real estate vested in such a manner that they have a common or equal right to possession and enjoyment of the property, but each holds a separate individual interest or estate in the property. The interest held can be disproportionate, e.g. 20% and 80%, 60% and 40%, etc. Each owner may sell or encumber his/her respective interest or dispose of it by will, and if he/she dies without leaving a will, his/her heirs inherit his/her undivided interest.

#### **JOINT TENANTS:**

Two or more persons hold title to real estate jointly, with **equal** rights to share in its enjoyment during their respective lives with the provision that upon death of a joint tenant, his/her share in the property passes to the surviving tenants, and so on, until the full title is vested in the last survivor. A joint tenant cannot legally encumber his/her interest without the consent or joinder of all of the joint tenants.

#### **TENANTS BY THE ENTIRETY:**

This is a modification of a joint tenancy between parties who are legally married and it has the quality of survivorship, but neither spouse can convey his or her interest to break the joint tenancy. Upon the death of either of the spouses, full title passes to the survivor, subject to state specific requirements being followed. Absent mutual consent, neither spouse can alienate the right of survivorship by any act as long as the marriage lasts.

#### **COMMUNITY PROPERTY:**

In community property states, this requires a valid marriage between two persons, and each spouse holds an undivided one-half interest in the estate. One spouse cannot partition the property by selling his or her interest, but each spouse can devise (will) one-half of the

community property. Upon death, the decedent's estate must be cleared through probate, affidavit or adjudication.

**COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP:**

This is also seen in community property states, and requires a valid marriage between two persons, and each spouse holds an undivided one-half interest in the estate, and neither can partition the property by selling his or her interest. The estate passes to the surviving spouse outside of probate and no court action required to clear title upon the first death.

You should decide the best manner in which to hold title, taking into consideration any legal or tax consequences, and if you have any questions that you seek the advice of an attorney. You should also review the deed to make sure it is prepared as you requested, as each state has a different statutory interpretation of conveyances made to two or more persons absent specific language within the deed.

NOTE: This information is intended to be useful for our clients but should in no way be construed as legal advice. We recommend an attorney be contacted regarding any legal questions.

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