Fidelity National Title

Advantages & Limitations of How You Take Title to Real Property

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-ownership. Co-Ownership of real property occurs when title is held by two or more persons. There are several variations as to how title may be held in each type of ownership. The following brief summaries reference some of the more common examples of Sole Ownership and Co-Ownership.

SOLE OWNERSHIP

A Single Man/Woman

A man or woman who is not legally married.
Example: John Doe, a single man.

An Unmarried Man/Woman

A man or woman, who having been married is legally divorced.
Example: Joe Doe, an unmarried man.

A Married Man/Woman, as His/Her Sole and Separate Property

When a married man or woman wishes to acquire title in his or her name alone, the spouse must consent, by quitclaim deed or otherwise, to transfer thereby relinquishing all right, title and interest in the property.
Example: John Doe, a married man, as his sole and separate property.

CO-OWNERSHIP

Community Property

The California Civil Code defines community property as property acquired by husband and wife, or by either. Real property conveyed to a married man or woman is presumed to be community property, unless otherwise stated. Under community property, both spouses have the right to dispose of one half of the community property. If a spouse does not exercise his/her right to dispose of one-half to someone other than his/her spouse, then the one-half will go to the surviving spouse without administration. If a spouse exercises his/her right to dispose of one-half, that half is subject to administration in the estate.
Example: John Doe and Mary Doe, husband and wife, as community property.
Example: John Doe and Mary Doe, husband and wife.
Example: John Doe, a married man.

Joint Tenancy

A joint tenancy estate is defined in the Civil Code as follows: "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy." A chief characteristic of joint tenancy property is the right of survivorship.

When a joint tenant dies, title to the property immediately vests in the surviving joint tenant(s). As a consequence, joint tenancy property is not subject to disposition by will.
Example: John Doe and Mary Doe, husband and wife, as joint tenants.

Tenancy in Common

Under tenancy in common, the co-owners own undivided interests, but unlike joint tenancy, these interests need not be equal in quantity or duration, and may arise at different times. There is no right of survivorship; each tenant owns an interest which, on his or her death, vests in his or her heirs or devisees.
Example: John Doe, a single man, as to an undivided 3/4th interest, and George Smith, a single man, as to an undivided 1/4th interest; as tenants in common.

Trust

Title to real property in California may be held in a title holding trust. The trust holds legal and equitable title to the real estate. The trustee holds title for the trustor/beneficiary who retains all of the management rights and responsibilities.

Community Property with Right of Survivorship

Community Property of a husband and wife, when expressly declared in the transfer document to be community property with the right of survivorship, and which may be accepted in writing on the face of the document by a statement signed or initialed by the grantees, shall, upon the death of one of the spouses, pass to the survivor, without administration, subject to the same procedures as property held in joint tenancy.

The preceding summaries are a few of the more common ways to take title to real property in California and are provided for informational purposes only. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended. There are significant tax and legal consequences on how you hold title. We strongly suggest contacting an attorney and/or CPA for specific advice on how you should actually vest your title.