ISSUE 58

# LAWYERS LINK

## HOLDING TITLE TO YOUR HOME

When you buy a home, you'll need to go through the process of taking title, which means becoming a legal owner of a property. A house title represents all of the legal rights surrounding the ownership and use of a residential property.

You will need to choose the manner in which your title is held, also known as "title vesting".

It's very important to give careful consideration to your titling decision prior to closing, as your

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decision will affect your rights while you own the home and provide direction for what happens if you or another owner dies. Your rights involve matters such 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.

## 5 Common Types of Title Vesting

Below are brief descriptions of the most common types of title vesting. You should not rely on these descriptions as legal definitions. You may wish to consult legal counsel to determine the most advantageous form of ownership for your particular situation, especially in cases of multiple owners of a single property.

### 1. Sole Ownership

With sole ownership, one person owns all rights, title and interest to the property. This type of ownership is not just for single people. A married person can hold title "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 heirs listed in a will. If there's no will, a probate court determines how it will be transferred.

### 2. Joint Tenancy with Right of Survivorship

A joint tenant with the right of survivorship is a legal ownership structure involving two or more parties. Each tenant has an equal share and equal ownership rights that automatically pass on to survivors in the event of an owner's death.

### 3. Community Property with Right of Survivorship

This type of vesting is only available for married couples. 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 "right of survivorship."

Right of survivorship means that after the death of a spouse, ownership of the property that is jointly owned by both spouses automatically passes to the other spouse. The property or asset therefore avoids probate completely.

### 4. Tenancy in Common

Tenancy in common is a type of ownership that is common among unmarried couples. It allows two or more people to co-own a property, in equal or unequal shares, who each have an equal right to possess the whole property. All tenants must pay their share of property tax, mortgage payments, monthly bills, and other property payments. Tenancy in common has no right of survivorship, which means when a tenant in common dies, property rights don't automatically go to the other owners. It is important to create a will after buying a home vested with tenants in common.

### 5. Living Trust

Some homeowners may decide the best way to handle the ownership of their property is to put it into a living trust. This type of ownership means that your property is held in a trust by you, for you; you're both the trustee and the beneficiary. When you die, the assets in your trust will be distributed according to your instructions without having to go through probate.

***Please contact your Lawyers Title Sales Executive for more information.***

*This information does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only.*

## MONTHLY INDUSTRY TERMS

**Equity**
The difference between the fair market value and current indebtedness, also referred to as the owner's interest. The value an owner has in real estate over and above the obligation against the property.

**Mortgage**
A conditioned pledge of property to a creditor as security for the payment of a debt.

**Negative Amortization**
Occurs when your monthly payments are not large enough to pay all the interest due on the loan. This unpaid interest is added to the unpaid balance of the loan. The danger of negative amortization is that the home buyer ends up owing more than the original amount of the loan.