

Picking the Best Way to Hold Title to Your Home

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One of the last things most home buyers think about is how to take title to their new house. It's best to consult an estate attorney before deciding but, unfortunately, most homeowners don't do that.

To help with the decision, here are the pros and cons of the five most common ways to hold title to your home:

1. Sole ownership

If you are single, one way to hold title to your home is in your name alone. This method is also called ownership in severalty.

When a married person takes title to real property in his or her name alone in sole ownership, the spouse is usually asked to sign a quitclaim deed giving up any ownership interest in the property.

This might be done, for example, when a husband invests in properties but his wife is not involved with the realty investments.

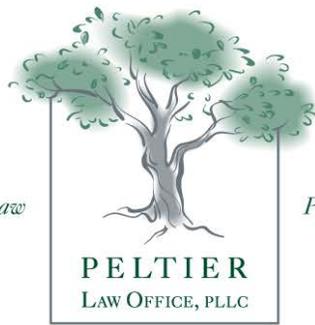
There are no special tax or other advantages of holding title in sole ownership. When the sole owner dies, any property held this way is subject to probate court costs and delays.

2. Tenants in common

When two or more co-owners take title to real estate, especially if they are not married to each other, they often become tenants in common. For example, two realty investors might select this method.

Each tenant in common owns a specified interest in the property. It need not be equal. For example, one owner might own a 50% interest, another could own a 10% interest and a third tenant in common could own a 40% share. The percentage ownership is specified on the deed.

A major advantage is that each tenant in common can sell or pass his interest by his will to whomever he or she wishes.



For this reason, tenancy in common is especially popular in second marriages, so each spouse can will his or her share to the children from a first marriage. Tenancy in common property is subject to probate court costs and delays.

A disadvantage is that the remaining tenant in common could wind up co-owning property with a stranger.

Another disadvantage (also true for joint tenancy) is that a tenant in common can bring a partition lawsuit to force a property sale if the other co-owners are unwilling to sell. The court can then order the property sold, with the proceeds split among the co-owners according to their ownership shares.

3. Joint tenancy with right of survivorship

When title is held in joint tenancy with right of survivorship, all co-owners must take title at the same time; they own equal shares and the surviving co-owner winds up owning the entire property. In some states, when husband and wife use this method, it is called tenancy by the entireties.

After a joint tenant dies, the surviving joint tenant(s) receives the deceased's share. The deceased's will has no effect on joint tenancy property.

A major advantage is that probate costs and delays are avoided when a joint tenant dies. The surviving joint tenant(s) usually needs only record an affidavit of survivorship and a certified copy of the death certificate to clear the title.

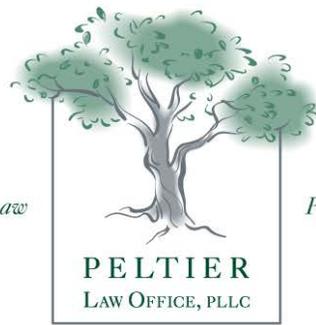
However, except for tenancy by the entireties, a major disadvantage is that a joint tenant can sell or give his property interest to a new owner without permission of the other joint tenant(s).

If there are only two joint tenants, the joint tenancy is ended by such a conveyance, creating a tenancy in common.

4. Community property

Husbands and wives who acquire realty in the community property states of California, Nevada, Louisiana, Wisconsin, Texas, Arizona, Washington, Idaho and New Mexico can take title as community property. Each spouse then owns half the property, which can be passed by the spouse's will either to the surviving spouse or someone else.

A special advantage is that community property assets willed to a surviving spouse receive a new stepped-up basis at market value on the date of death. In 1987, the [IRS](#) extended this community property stepped-up basis advantage to husbands and wives holding joint tenancy titles in community property states.



To qualify, IRS Revenue Ruling 87-98 requires spouses to acknowledge in writing to each other that their joint tenancy property is also community property.

5. Living trust

Probably the best way to hold title to homes and other real property is in a revocable living trust. There are many advantages, such as avoidance of probate costs and delays.

Other than the modest cost of creating a living trust (usually less than \$1,000) and deeding real property into the living trust, there are no disadvantages.

Until the death or disability of the trust creator, the home and other real estate in the living trust are treated normally.

Stocks, bonds, bank accounts, automobiles and other major assets can also be held in a living trust. Since the living trust is revocable, these assets can be bought, sold and financed normally.

If the trustor becomes incompetent, the named alternate trustor (such as a spouse or adult child) takes over management of the trust assets. When the trustor dies, the assets are distributed according to the trust's terms.

Privacy is a major advantage. Unlike a will, which becomes part of the public probate file, the living trust terms remain private. For example, late [Bing Crosby](#) held virtually all his assets in a living trust and its terms never became public.

Still another advantage is that court challenges of living trusts are virtually impossible, whereas will challenges by disappointed relatives occur frequently.

Summary

The five most popular methods of holding residence titles all have their pros and cons. Overall, the best method for most homeowners is the living trust, because of all its advantages.