

Common Ways to Hold Title to Real Property

Title to real property in Arizona, may be held by individuals, either in Sole Ownership or in Co-Ownership. Co-ownership of real property is where 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 are the more common examples of sole ownership and co-ownership. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended.

Sole and Separate: Real property owned by a spouse before marriage or any acquired after marriage by gift, descent or specific intent. If a married person acquires title as sole and separate property, his/her spouse must execute a disclaimer deed.

Tenancy in Common: Two or more persons may hold title to real property as tenants in common. In Arizona, married couples must reject community property and specifically take title as tenants in common. Each owner has a distinct and proportionate interest without the right of survivorship. The only unity involved is possession. Their undivided interest need not be equal but in the aggregate cannot exceed 100% of the ownership interest. A tenant in common may transfer his undivided interest without destroying the co-tenancy estate.

Joint Tenancy with the Right of Survivorship: Two or more persons may hold title to real property as joint tenants with the right of survivorship. The advantage of joint tenancy with right of survivorship is that upon death of one of the joint tenants, their interest is transferred outside probate to the surviving tenant(s). NOTE: Evidence of the intent of a married couple to hold title to real property as joint tenants with right of survivorship must be in writing to avoid the presumption of community property.

Community Property: Only persons married to each other may own real property as community property. Each spouse owns equal interest in their community property. Each spouse may provide by will for the disposition of his or her community interest in the community real property. However, Arizona community property law requires both spouses to join in a conveyance or encumbrance of community real property. Property acquired by a spouse during marriage is presumed to be community property except that property acquired by gift, devise or descent. A married couple seeking to hold title to real property located in Arizona in a form other than community property may do so by renouncing the community property form and specifically accepting another form of co-tenancy.

Community Property with the Right of Survivorship: Only persons married to each other may take title as community property with the right of survivorship. One spouse is entitled to the whole of the property upon the death of the other and both interests of the community property receive a new tax basis equal to the fair market value as of the date of death. Evidence of the intent of a married couple to hold title to real property as community property with right of survivorship must be in writing in order to avoid the presumption of community property. When parties that hold property as community property with the right of survivorship dissolve or annul their marriage, the property converts to tenancy in common.

General Partnership: Title may be taken in the name of a general partnership duly formed under the laws of the state of Arizona or the state of the formation of the partnership. A partnership is defined as a voluntary association of two or more persons as co-owners in a business for profit.

Limited Partnership: A partnership formed by two or more persons under the laws of Arizona or another state and having one or more general partners and one or more limited partners. A certificate of limited partnership must be filed in the Office of the Secretary of State.

Limited Liability Company: Title may be taken in the name of a Limited Liability Company by properly filing articles of Organization of a Limited Liability Company with the Arizona Corporation Commission or under the laws of the state of formation.

Corporation: Title may be taken in the name of a corporation provided that the corporation is duly formed and in good standing in the state of its incorporation.

