

*Understanding Typical Ways
of Holding Title & What is Title Insurance*

HOW TO TAKE TITLE Advantages & Limitations: 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 seven of the more common examples of sole ownership and co-ownership.

How should I take ownership of the property I am buying?

This important question is one California real property purchasers ask their real estate, escrow and title professionals every day. Unfortunately, though these professionals may identify the many methods of owning property, they may not recommend a specific form of ownership, as doing so would constitute practicing law.

Because real property has become increasingly more valuable, the question of how parties take ownership of their property has gained greater importance. The form of ownership taken- the vesting of title- will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights involves such matters 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.

The California Land Title Association (CLTA) advises those purchasing real property to give careful consideration to the manner in which title will be held. Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.

The CLTA has provided the following definitions of common vestings as an informational overview. Consumers should not rely on these as legal definitions. The Association urges real property purchasers to carefully consider their titling decision prior to closing, and seek counsel should they be unfamiliar with the most suitable ownership choice for their particular situation.

Common Methods of Holding Title

Sole Ownership

Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common vestings in cases of sole ownership are:

1. A Single Man/Woman:

A man or woman who has not been legally married. For example: Bruce Buyer, a single man.

2. An Unmarried Man/Woman:

A man or woman who was previously married and is now legally divorced. For example: Sally Seller, an unmarried woman.

3. A Married Man/Woman as His/Her Sole and Separate Property:

A married man or woman who wished to acquire title in his or her name alone.

The title company insuring title will require the spouse of the married man or woman acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that it is the desire of both spouses that title to the property be granted to one spouse as that spouse's sole and separate property. For example: Bruce Buyer, a married man, as his sole and separate property.

Co-Ownership

Title to property owned by two or more persons may be vested in the following forms:

1. Community Property: The California Civil Code: defines community property as property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of 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 by will, but if there is no will, all of the property 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 & Mary Doe, husband and wife, as community property. Example: John Doe & Mary Doe, husband and wife. Example: John Doe, a

married man.

2. Community Property with Right of Survivorship:

Community Property with Right of Survivorship has the same attributes as the traditional community property form of title but, like joint tenancy, has the additional attribute of the right of survivorship. When a husband and wife hold title as Community Property with Right of Survivorship, the full interest in the property will vest, by law, in the surviving spouse immediately upon the death of the first spouse. Title insurers will be able to invest title free and clear of the deceased spouse's interest merely by the recordation on an Affidavit similar to the one used to clear the interest of a deceased joint tenant. The survivorship feature will, in most instances, avoid the lengthy escrow delays caused by probate proceedings and other legal actions often associated with the traditional community property form of title. Spouses will also have the ability to unilaterally sever the right of survivorship in the same manner that a joint tenancy is severed. Severance of the right of survivorship may result in the property being vested in the traditional community property form,

3. 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 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.

4. Tenancy In Common: Under tenancy in common, the co-owners own undivided interests but, unlike joint tenancy, the 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 devisee. Example: John Doe, a single man, as to an undivided 3/4ths interest, and George Smith, a single man, as to an undivided 1/4th interest, as tenants in common.

Other ways of vesting title include:

1. A corporation:

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

2. A Partnership:

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

3. Trustees of A Trust:

A trust is an arrangement whereby legal title to property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries.

4. Limited Liability Companies (L.L.C.):

This form of ownership is a legal entity and is similar to the corporation and the partnership. The operating agreement will determine how the L.L.C. functions and is taxed. Like the corporation, its existence is separate from its owners.

In cases of corporate, partnership, L.L.C., or trust ownership-required documents may include corporate articles and bylaws, partnership agreements, L.L.C. operating agreements and trust agreements and/or certificates.

How title is vested has important legal consequences. You will want to consult an attorney &/or your tax adviser to determine the most advantageous form of ownership for your particular situation.



Title Insurance

WHY DO YOU NEED TITLE INSURANCE?

To protect possibly the most important investment you'll ever make – the investment in real estate.

A lender goes to great lengths to minimize the risk of lending money for the purchase of real estate. First, credit is checked as an indication of the borrower's ability to repay the loan.

Then, the lender seeks assurance that the quality of the title to the property to be acquired and which will be pledged as security for the loan is satisfactory. The lender does this by obtaining a loan policy of title insurance.

THE LOAN POLICY DOES NOT PROTECT THE BORROWER

The loan policy protects the lender against loss due to unknown title defects. It also protects the lender's interest from certain matters which may exist, but may not be known at the time of the sale.

But, this policy only protects the lender's interest. It does not protect the borrower. That is why a real estate purchaser needs an owner's policy, which can be issued at the same time as the loan policy, usually for a nominal one-time fee.

WHAT IS THE DANGER OF LOSS?

If the lender has title insurance protection and the owner does not.

What possible danger of loss exists?

As an example, assume real estate was purchased for \$100,000. A down payment of \$20,000 is made, and a lender holds an \$80,000 mortgage lien, or beneficial interest. The lender acquires title insurance protecting the lender's interest up to \$80,000. But the purchaser's down payment of \$20,000 is not covered.

What if some matter arises affecting the past ownership of the property? The title insurance company would defend and protect the interest of the lender. The purchaser, however, would have to assume the financial burden of his or her own legal defense. If the defense is not successful, the result could be a total loss of title.

The title insurance company pays the lender's loss and is entitled to take an assignment of the borrower's debt. The purchaser loses the down payment,

other equity in the property that may have accumulated, and the property. And the balance on the note is still due!

HOW CAN THERE BE A TITLE DEFECT IF THE TITLE HAS BEEN SEARCHED AND A LOAN POLICY ISSUED?

Title insurance is issued after a careful examination of copies of the public records. But even the most thorough search cannot absolutely assure that no title hazards are present, despite the knowledge and experience of professional title examiners. In addition to matters shown by public records, other title problems may exist that cannot be disclosed in a search.

WHAT TITLE INSURANCE PROTECTS AGAINST

Here are just a few of the most common hidden risks that can cause loss of title or create an encumbrance on title:

- Forged deeds, releases or wills
- Undisclosed or missing heirs
- Instruments executed under invalid or expired power of attorney
- Mistakes False impersonation of the true owner of the property in recording legal documents
- Misinterpretations of will
- Deeds by persons of unsound mind
- Deeds by minors
- Deeds by persons supposedly single, but in fact married
- Liens for unpaid estate, inheritance, income or gift taxes
- Fraud

WHAT PROTECTION DOES TITLE INSURANCE PROVIDE AGAINST DEFECTS AND HIDDEN RISKS?

Title insurance will pay for defending against any lawsuit attacking the title as insured, and will either clear up title problems or pay the insured's losses. For a one-time premium, an owner's title insurance policy remains in effect as long as the insured, or the insured's heirs, retain an interest in the property, or have any obligations under a warranty in any conveyance of it . Owner's title insurance, issued simultaneously with a loan policy, is the best title insurance value a property owner can get.