

Types of Ownership, Joint Tenants, Tenants in Common, and Types of Deeds

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There are many ways in which individuals acquire real estate. Below is a summary of the different types of ownership and deeds.

Prior to purchasing real estate, buyers must determine the type of ownership that best fits their needs. The choice of ownership will impact the ability to transfer the real estate in the future and has tax implications as well. While real estate professionals should be able to identify the basic forms of ownership available, it is up to the prospective buyer to explore the options and make the correct decision, most likely with the advice of an attorney.

Although the forms of ownership available are controlled by state law, real estate may be held in one of three basic ways. They include ownership in severalty (one owner), co-ownership (more than one owner), and ownership by a trust (property held for the benefit of another).

Ownership in severalty occurs when the property is owned by one individual, corporation, or other entity. The term comes from the fact that a sole owner is severed or cut off any right to ownership from other owners. The owner in severalty has sole rights to the property and sole discretion to sell, will, lease, or otherwise transfer part or all of the ownership rights to another person.

When title to a parcel of real estate is held by two or more individuals, those parties are called co-owners or concurrent owners. In some states, if co-owners are married or in a recognized civil union, they may co-own property as tenants by the entirety or community property.

Another type of co-ownership is tenants in common. In a tenancy in common (TIC), each tenant holds an undivided interest in the property. The co-owners have unity of possession, meaning that each owner is entitled to possession and use of the entire property, even though each holds only a fractional ownership interest. Because the co-owners own separate interests, they can sell, convey, mortgage, or transfer their individual interests in the TIC without consent of the other co-owners. A share owned by a married couple can be transferred only with the agreement of both parties.

Most states recognize some form of joint tenancy in property owned by two or more people, whether married or unmarried. The distinguishing feature of a joint tenancy is the right of survivorship. Upon the death of a joint tenant, the decedent's interest transfers directly to the surviving joint tenant or tenants. Essentially, there is one less owner. No formal legal action is required, although the death certificate of the deceased owner should be made part of the public record and copy retained by the surviving owner(s).

If there are only two joint tenants, the death of one of the owners terminates the joint tenancy. If there are three or more joint tenants, at each successive joint tenant's death, the surviving owners acquire the deceased's interest. In either case, the last survivor takes title in severalty and has all the rights of sole ownership, including the right to pass the property to any heirs.

A trust is a device by which one individual transfers ownership of property to someone else to hold or manage for the benefit of a third party. Most states allow real estate to be held in trust. Depending on the type of trust and its purpose, the trustor, trustee, and beneficiary can all be either people or legal entities, such as corporations. Real estate can be owned under living or testamentary trusts and land trusts. It can also be held by investors in a *real estate investment trust (REIT)*.

The word *title*, as it relates to real property (real estate), has two meanings; (1) the right to or ownership of the property, including the owner's bundle of legal rights; and (2) evidence of that ownership by a deed. The title refers to *ownership* of the property, not to a printed document. The document by which the owner transfers title to the property is the deed.

A deed can take several forms, depending on the extent of the grantor's promises to the grantee. Regardless of any guarantees the deed offers, the grantee will want assurance that the grantor has the right to offer what the deed purports to convey. To obtain this protection, grantees commonly seek evidence of title.

The most common deeds are the following:

- ? General warranty deed
- ? Special warranty deed
- ? Bargain and sale deed
- ? Quitclaim deed
- ? Deed of trust
- ? Reconveyance deed
- ? Trustee's deed
- ? Deed executed pursuant to a court order

A *general warranty deed* provides the greatest protection to the buyer because the grantor is legally bound by certain covenants (promises) or warranties. These covenants include covenant of seisin, covenant against encumbrances, covenant of further assurances, covenant of quiet enjoyment, and covenant of warranty forever. In most states, the warranties are implied by the use of certain words specified by statute. In some states, the grantors warranties are expressly written into the deed itself.

The *special warranty deed* includes the warranties that the grantor received the title and that the property was not encumbered during the time the grantor held the title, except as otherwise noted.

The *bargain and sale deed* implies that the grantor holds title and possession of the property, but there are no express warranties against encumbrances.

The *quitclaim deed* provides the least protection of any deed as it carries no covenants or warranties, and conveys only whatever interest the grantor may have when the deed is delivered.

With a *deed of trust*, a trustor conveys real estate to a trustee for the benefit of a beneficiary. A *reconveyance deed* is used by the trustee to return the title to the trustor, but a *trustee's deed* conveys the property to someone other than the trustor. There may also be a *deed executed pursuant to a court order*.

If you have any questions regarding the topics of ownership and types of deeds, feel free to contact Peoples Company.

Allaway, Wellington J.; Galaty, Fillmore W.; Kyle, Robert C. *Modern Real Estate Practice*. 19th Edition La Crosse, WI: DF Institute, Inc, 2016.Print