

HOW TO TAKE TITLE TO REAL ESTATE

Often, when people purchase a home their attorney makes an assumption as to how they want to take title without ever discussing options and consequences with their client. Likewise, after people establish trusts, many people, including attorneys, sometimes make simplified assumptions as to how real estate should then be titled. The thoughtful person will take a wide variety of issues into consideration in deciding how real estate is titled, or retitled.

Here is a brief discussion of some things to consider relating to real estate.

1. Ways To Hold Title To Real Estate:

There are many different ways to hold title to real estate, each having their own legal, financial and tax consequences. There is no single way of holding title that is right for everyone in all situations. Here are some of the common ways that people hold title to real estate:

- In the name of 1 individual.
- In the name of more than 1 individual as Joint Tenants with right of survivorship.
- In the name of more than 1 individual as Tenants in Common.
- In the name of 2 married individuals as Tenants by the Entireties, if qualified (now also allowed for certain revocable living trusts).
- In a land trust.
- In their revocable living trust.
- In a Limited Liability Company (LLC).
- In a corporation.
- Some combination of the above such as in an LLC of which their revocable living trust is the Member.

Each form of ownership should be analyzed in terms of the issues that you consider to be important. Some common issues of importance are discussed below. Of course, some of the issues mentioned below might not be important to you and you may have issues that are important that are not listed below.

2. Some Issues To Consider in Making Title Decisions:

There are a variety of issues that people could consider when it comes to real estate. Here are a few of the many issues that you may want to consider (not in order of importance):

- Risk / Liability.
- Who gets what upon the death of an owner.
- Income Tax considerations.
- Gift Tax considerations.
- Estate Tax considerations.
- Possible divorce.
- Costs of setting something up and/or maintaining it.
- Ease of management.
- Avoiding Probate.

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