

Taking Title to Real Property



How to take title?

As non-attorney title insurance closing agents we are not allowed to advise others on how to take title. The best response is to refer them to written material or to an attorney for consultation.

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Types of Tenancies

- Sole Tenancy
- Joint Tenancy with Right of Survivorship
- Tenants By The Entireties
- Tenants in Common
- Trusts
- Corporation or LLC



Sole Tenancy/Tenancy in Severalty

- A person that holds title alone
- Ownership rights are severed from all others



Tenants in Common

- If a married couple gets divorced they will hold title as tenants in common
- There is no right of survivorship in this type of tenancy
- If a cotenant dies their interest passes by devise or if no will, to their heirs



Tenants in Common

- **Tenants in Common-** Two or more persons hold title to real property but do not choose another form of tenancy will hold title as Tenants in Common
- Each person owns a separate interest in the property. If percentage of ownership is not specified it is assumed that they hold equal interests.
- Each person has the right to transfer, sell, convey, or mortgage his or her *interest* without approval of the others. The person who acquires their interest will hold title as tenants in common with the remaining persons.
- They cannot sell a *specific* portion of the property without consent of the others



JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

TWO OR MORE PEOPLE HOLD TITLE TOGETHER

- Joint Tenancy- must be created and properly worded
 - Must hold equal ownership interests
 - Acquire interests at the same time
 - Acquire under the same instrument and the same source
 - Must hold an individual right to possession
- Equal interests to all parties in title and an undivided interest



JOINT TENANTS/RIGHT OF SURVIVORSHIP CONT.

- Cotenants desire that upon death their interest automatically passes to the surviving cotenant
- Severed if one of the parties conveys their interest



TENANTS BY THE ENTIRETY

- A married couple taking title together will take title as Tenants by the Entireties
- The entire estate is owned by each spouse with each other
- Each of the married partners has full right to the property should the other die



SAME-SEX MARRIAGES AND UNIONS

- Supreme Court ruling Effective June 26, 2015
- Examples may include:
 - John Smith and Fred Smith, a married couple
 - Susan Jones and Mary Doe, her spouse
 - David Doe and John Doe, a married couple



KILLING OF ONE SPOUSE BY THE OTHER



- It's a long standing rule in Florida that an estate by the entirety is deemed severed when one spouse murders the other and the property is treated as if it had been held as tenancy in common.



DISSOLUTION OF MARRIAGE



Marital Status and Homestead Property

- When a couple is legally married and in the process of getting divorced and one spouse is trying to convey or encumber the existing property or purchase a new property, joinder of spouse is required.
- To extinguish homestead rights any time that only one of the persons in the married couple is in title and it is not the couples homestead property, then a non-homestead clause should appear on the face of the instrument



AFTER FINAL DIVORCE-

- Upon dissolution of marriage a tenancy by the entirety automatically becomes tenancy in common **unless** the final judgement of dissolution was entered by a Florida Court and the property was awarded to one spouse



HOMESTEAD

- FLORIDA CONSTITUTION ESTABLISHED IN 1885 AND REVISED 1968 PLUS NUMEROUS AMENDMENTS

Provides for homestead protection from forced sale by creditors and property tax exemption



THREE KINDS OF HOMESTEAD

- Provides homestead with an exemption from taxes
- Protects homestead from forced sale by creditors
- Outlines the restrictions a homestead owner faces when attempting to alienate or devise homestead property



Marital Status and Homestead Property

- Joinder of spouse is required to convey or encumber homestead property as defined by the Constitution of the State of Florida
- In the case of homestead property where a single person purchased the property when single and then got married, joinder of spouse is required.



JOINDER OF SPOUSE

- In any situation where individuals are married, joinder of spouse is required for a conveyance or mortgage of homestead property



HOMESTEAD WHEN MORTGAGING

- If only one spouse qualifies for and mortgages property in his or her name only and the property is his or her primary residence, the other spouse must so-sign the mortgage



Personal Representative

- A personal representative is a fiduciary (a person who manages money or property for another) appointed by a Florida court authorized to administer an estate, **whether testate or intestate**. Personal representatives can be Florida or non-Florida residents. §§ 733.302 and 733.303, Fla. Stat.



TESTATE-WITH A WILL

- **Required items:**
- Death certificate
- Will
- Florida order admitting will to probate
- Letters of administration
- Petition for administration
- Proof of estate tax clearance



TESTATE CONTINUED

- **Items that may be required:**
- Order determining homestead
- Order authorizing sale (if will does not give PR power of sale)
- Order for summary administration



INTESTATE-WITHOUT A WILL

- **Required items:**
- Death certificate
- Petition for administration
- Florida order authorizing sale
(for non-homestead property only since PR cannot sell homestead)
- Proof of estate tax clearance



INTESTATE CONTINUED

- **Items that may be required:**
- Order determining homestead
- Order for summary administration



TYPES OF PROBATE ADMINISTRATION

- **SUMMARY ADMINISTRATION**
- **FORMAL ADMINISTRATION**



Thank You!

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