



Real Estate Matters

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The Importance of Title on Your Deed of Trust

The names on the title of your property and the form of that title can impact your ability to stay in your home. How you hold title can cut out your intended heirs or reduce their tax consequences. From a new perspective, think of the title to your property as part of your estate planning. For most Americans, their home is their largest asset.

Examples of not actively planning

A) Mrs. Anderson wanted to take care of her only son's future. She added her son Ralph to the title of her home. In his early twenties, Ralph finally married his childhood sweetheart. Ten years later, Ralph and his beloved wife Dianna divorced. Dianna sued for half of her husband's portion of the home and threatened to force the sale of the home if he did not buy out her $\frac{1}{4}$ of the property.

B) Miss Malone adored her niece. After her niece organized a party for Miss Malone's 70th birthday, she added her niece Melody to the title. Unfortunately, Melody's financial situation deteriorated rapidly due to the failure of her Soups Galore store. Melody declared bankruptcy and her interest in her aunt's home was included in the items to be liquidated to pay off a portion of the debt.

C) Mr. Rodriguez, a widower, bought a luxury home in 1994 in a very upscale active adult community. He married a lovely widow in 1995. After the honeymoon, Mr. Rodriguez adjusted his will to ensure that his new wife would inherit their home. He always intended to add his wife to the title, but didn't get around to it. When Mr. Rodriguez died on the tennis court in 2001, his bereaved widow was subject to capital gains tax on all of the property, instead of just half.

D) Mrs. Rodriguez met a wonderful man in grievance therapy and she married in 2003 to

become Mrs. Bonheur. The day before the wedding, she added her husband Troy as joint tenant to the primary home and her rental cottages. They both had adult children from their former lives and intended to leave their individual estates to their respective children. The Bonheurs discussed it but were too busy with their charity work and grandchildren's activities to take the time to see an attorney. Mrs. Bonheur predeceased Troy, who secretly disliked her two sons. He kept the home and the cottages for himself and willed everything to his daughter.

E) Mr. Bellingham's daughter Emily had a medical condition that made it difficult for her to work outside the home, but she was able to cook and take good care of her father in his sunset years. Her father, who had limited resources, willed the debt-free family home to her, expecting the money from the sale of the four bedroom house to support his daughter. Unfortunately, probate took ten months and Emily barely made ends meet while waiting to clear probate and put the home on the market.

What are the different kinds of title and the implications?

In the event of a conflict between the title on your home and your will, title wins.

- You alone are on the deed of trust. In many states, if the property is held as an **individual**, at death, the property must go through probate.

What is probate?

Probate is the process that transfers legal title of property from the estate of the person who has died to his or her proper beneficiaries.

Probate formally proves the existence of a legitimate will or in the event of no will, ascertains who your legal heirs are. The process of probate decides who gets your property. While probate means that your estate is administered independently and

supervises paying off debts, the process typically takes one year after someone has died, is public, can cost as much as 10% of your estate, and removes control from your heirs.

- **Joint tenancy** has multiple names on the title and everyone has an equal share. Three people on the title means each has one-third ownership. Four people means each has one-fourth, etc. Anyone can be a joint tenant, including non-relatives such as neighbors or close friends. (Joint tenancy can provide a step up in basis on the decedent's share for capital gains tax.) Upon death, ownership immediately transfers to the surviving tenant(s).

- **Tenancy in common** lets each person use 100% of the property but keeps separate his or her own share and allows each to sell or will his or her share to any one he chooses.

- **Tenancy by the entirety** is only available to married couples. Its applicability varies by state. If a spouse refuses, a bankruptcy cannot force the sale of the home.

- In nine states (AZ, CA, ID, LA, NV, NM, TX, WA, WI), **Community Property** refers to husband and wife only. Property goes to the surviving spouse unless contradicted in the will. You can will your half to someone else. For property with significant appreciation, there are major tax benefits.

Trusts

Two examples of several kinds of trusts are:
1) A **Living Trust** manages the assets, such as your property, during life and distributes those assets upon death. However, living trusts may continue after death to aid the beneficiaries. If you become incapacitated, the person you have appointed as the administrator of your trust can manage on your behalf without court

interference. A revocable living trust can be changed at any time before death.

2) **A/B Trusts** are established up by Husband and Wife. Each puts his or her property onto an A/B trust. When one spouse dies, his or her half of the estate eventually goes to the beneficiaries named in the trust. Usually in this type of trust the beneficiaries are the grown children of the couple. The surviving spouse has use of the property for his or her life and any income generated from that property. When the second spouse passes on, the property goes to the beneficiaries. The federal tax exemption is another benefit.

Options: In **Example A and B** on page one, both situations could have been avoided with a living trust, protecting Mrs. Anderson from potential problems with her daughter-in-law's demands and Miss Malone from her niece's bankruptcy takeover. In **Example C**, Mr. Rodriquez could have avoided some of the tax liability for his wife if he had set up a trust. Mrs. Bonheur in **Example D** would have ensured her sons' eventual inheritance of her estate if she and Troy had set up A/B trusts with the children as beneficiaries. In the **last example**, Emily could have avoided probate on her home if Mr. Bellingham had made her a joint tenant or better yet, set up a trust.

These are just a few examples of the many possible solutions.

Give a gift to yourself - peace of mind. Double check how title to your home is currently held. Make a conscious choice, even if it is to make no adjustments. Otherwise, talk to a real estate attorney and take action based on the laws in your state (such as quitclaim deed, etc.) Part of peace of mind is the satisfaction that you have your property title arranged to what best suits your situation. Action is a key component of **Satisfaction**.

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