

Holding Title To Real Estate

With Someone Who Is Not Your Spouse

- If title to real estate is held with another person who is not your spouse, it can be held as tenants-in-common or as joint tenants. This choice has legal consequences.
- Holding title as **tenants-in-common** means that each person owns an interest to a separate share of the real estate. For example, if an unmarried couple own a lot as tenants-in-common, each person owns ½ of the lot but does not own any interest in the other person's ½ of the lot. If one of them dies, that person's interest in the real estate would pass under his or her will or to his or her heirs at law. The surviving owner would end up having co-owners he or she might not have chosen, the other person's children or heirs. A properly prepared legal agreement and estate plan can avoid this.
- Holding title to real estate with another person as **joint tenants with right of survivorship** means that each person owns an interest in the entire parcel of real estate, with the survivor owning the whole property. If one owner dies, that person's interest in the real estate would pass, by law, to the surviving owner. If the survivor then dies (even if it is only a short time later), the whole property passes to the survivor's beneficiaries or heirs. The first deceased owner's family or beneficiaries receive nothing.
- Holding title with a non-spouse can raise many questions and problems.
 - Who is responsible for paying the real estate taxes?
 - Who is responsible for paying the utilities?
 - Who is responsible for the costs of maintenance on the property?
 - Who decides how the property will be used?
 - Who will live in any residence on the property?
 - How will any income tax deductions be claimed?
 - If one party becomes disabled and cannot make payments, what happens?
 - What happens if one owner wants to sell and the other doesn't?
 - What happens if one person wants to take renters and the other doesn't?

- What happens if the parties disagree or have a dispute?
- If one party gets sued or has creditor problems, the other party can be harmed by liens on the property or lose it in a lawsuit.
- If disputes cannot be resolved, court proceedings are necessary and the property could be sold at a “fire-sale” price. This can result in a loss of value for both owners.

If you want to hold title to real estate with another person who is not your spouse, many problems can be avoided by using proper legal agreements. Consult an attorney about your intentions before you purchase a property with someone who is not your spouse.

Provided courtesy of:



1800 S. Russell St. #300 | Missoula, MT 59801

406.728.4444 phone | 406.728.0455 fax | www.jmlaw.org

The above content is for informational purposes only and is not intended as a source for legal advice as the particular facts of your situation must be considered before rendering such advice.

Copyright © 2006 Joanne M. McCormack. All Rights Reserved.