

LEGAL EASE



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Ways to co-own property are important to understand

In the excitement of purchasing property, such as a condo, a house, land or modular home, many people do not pay attention to the form of ownership that is listed on the deed or title. There are so many papers to review and sign at settlement time, the deed often takes a “back seat.” However, a recent newsletter article for attorneys from Elder Law Answers points out that understanding “tenancy” is very important when multiple persons own property.

When more than one person owns property, there are choices on how to own that property. Those choices can increase or limit flexibility, and can protect against creditors or open the entire property to a claim against one owner. How the property passes at the death of one owner should also be considered, as well as if one of the owners wishes to pass their ownership to another during life. This is known as tenancy and should be carefully considered at the time of deed preparation.

In Pennsylvania, three types of tenancy exist. If the persons are married, they can own the property as “tenants by the entireties.” Neither tenant can convey his or her interest in the property to anyone else. Upon death of one spouse, the property automatically is owned by the surviving spouse. Most importantly, creditors of one spouse cannot attach the property or force a sale. This tenancy protects one spouse from losing their home because the other spouse has incurred some type of large debt. Usually, just mention of the marital relationship in the deed is enough to indicate the desire for tenancy by the entireties although some practitioners spell it out. If a couple buys property and later marries, the deed should be changed to reflect the new tenancy designation.

Another type of tenancy is “joint tenants with right of survivorship.” This indicates that the persons, no matter how many, hold equal shares of the property and cannot give away or sell their share during their lifetime. Upon the death of one of the co-owners, the other owner or owners become sole owner of the entire property. There is not automatic creditor protection however as there is with tenants by the entireties. Creditors can sue to partition the property and sell it over the other owner’s objections.

“Joint owners with right of survivorship” must be specifically listed on the deed or it is presumed that the third type of ownership, “tenants in common” is the choice. Tenants in common is the most flexible form of ownership as tenants can have different percentages of ownership interest, and tenants can sell or give away their ownership during life or in their Will. Again, the disadvantage is that creditors can attach the property interest of debtor, jeopardizing the interests of the other tenants.

It is important to consult your attorney about which type of ownership interest is best for you while taking into account the other co-owners and their interests. Failing to consider the ramifications may make your investment less stable than you had thought or can have unintended consequences at the death of one or more co-owners.