



# **Ways to Take Title to Real Property** **in Arizona**

One of the many decision you will have to make when buying real property is how to take title. Let's explore the different ways one can take title in Arizona. Title can be held by natural persons i.e. you and me, or by legal persons i.e. corporations and partnerships.

Arizona is a Community Property State. This means that there is a statutory presumption that all real property that is acquired by married persons is community property.

## **Community Property**

Community property is a method of co-ownership for married persons only. Upon the death of one spouse, the deceased spouse's interest will pass by either a will or intestate succession - Intestate succession means, the transfer of property to relatives of a decedent who died without leaving a valid will. The state's statute will specify which relatives receive intestate shares and in what amount.

## **Community Property with Right of Survivorship**

This type of estate can be held by a husband and wife when created by specific written language in the vesting document. Upon death of one spouse, the estate is vested in the surviving spouse. An affidavit terminating the right of survivorship, together with a certified copy of the death certificate is recorded.

## **Joint Tenancy with Right of Survivorship**

This is a method of co-ownership that transfers the title to real property to the last surviving owner. If a married couple acquires title as joint tenants with right of survivorship, they must specifically elect the joint tenancy to avoid the presumption of community property.

## **Tenancy in Common (TIC)**

This is a form of co-ownership whereby each owner (tenant in common) owns a specific undivided interest in the entire title. There is no right of survivorship, each owner has a separate title to his/her interest, and can transfer his or her share separately from the other co-owners.

## **Sole and Separate**

This is real property owned by a spouse before marriage or acquired after marriage and held separately. If a married person acquires title as sole and separate property, his or her spouse must execute a disclaimer deed.

## **Corporations & Partnerships**

Title to real property may be taken in the name of a corporations and partnerships (legal persons) provided that they were duly formed and are in good standing.

## **A Word of Caution**

Each method of taking title has certain legal and tax consequences. I encourage you to seek advice from your attorney and/or certified public accountant to determine which way would be most beneficial for your particular situation. This article is only intended for information purposes.

**The following chart was provided by Magnus Title Agency**

<i>Holding Title to Real Property in Arizona</i>	<b>Tenancy In Common</b>	<b>Joint Tenancy with Right of Survivorship</b>	<b>Community Property</b>	<b>Community Property with Right of Survivorship</b>
<b>Parties</b>	Any number of persons (can be husband & wife)	Any number of persons (can be husband & wife)	Only husband & wife	Only husband & wife
<b>Division</b>	Ownership can be divided into any number of interests, equal or unequal	Ownership interest must be equal	Ownership interest must be equal	Ownership interest must be equal
<b>Title</b>	Each co-owner has separate legal title to his undivided interest	There is only one title to the whole property	Title is in the "community." Each interest is separate but management is unified	Title is in the "community." Each interest is separate but management is unified
<b>Possession</b>	Equal right of possession	Equal right of possession	Equal right of possession	Equal right of possession
<b>Conveyance</b>	Each co-owner's interest may be conveyed separately by its owner	Each co-owner's interest may be conveyed separately by its owner	Purchaser can only acquire whole title of community	Purchaser can only acquire whole title of community
<b>Purchaser's Status</b>	Purchaser will become a tenant in common with the other co-owners of the property	Purchaser will become a tenant in common with the other co-owners of the property	Purchaser can only acquire whole title of community	Purchaser can only acquire whole title of community
<b>Death</b>	On co-owner's death, his interest passes by will to the devisees or heirs. No right of survivorship	On co-owner's death, his interest ends and cannot be disposed of by will. Survivor owns the property by right of survivorship	On co-owner's death, ½ belongs to survivor in severalty, ½ goes by will to descendant's devisees, or by succession to survivor	On co-owner's death, his interest ends and cannot be disposed of by will. Estate passes to survivor outside of probate
<b>Creditor's Rights</b>	Co-owner's interests may be sold at execution sale to satisfy his creditor. Creditor becomes a tenant in common	Co-owner's interests may be sold at execution sale to satisfy his creditor. Joint tenancy is broken. Creditor becomes a tenant in common	Co-owner's interest cannot be seized and sold separately. The whole property may be sold at execution sale to satisfy creditors	Co-owner's interest cannot be seized and sold separately. The whole property may be sold at execution sale to satisfy creditors
<b>Presumption</b>	Court will presume tenancy in common if not expressly stated husband & Wife	Must be expressly stated in writing and accepted. Court will not presume joint tenancy	Strong presumption that property acquired by husband & wife is community Property	Must be expressly stated in writing and accepted. Court will not presume joint tenancy. Both halves of community property are entitled to "stepped up" tax basis as of the date of death of either spouse

Good luck!

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*Dimitri Larno got his start as a Realtor® by investing in real estate himself. He brings almost 12 years of real estate investing experience to the table. Dimitri's specialties include primary residences, second homes, investment properties, commercial properties and land. Dimitri has been recognized for being a Multi-million Dollar Producer, and is an accomplished investment Realtor®.*

*"Strive not to be a success but rather to be of value" Albert Einstein*