

PROPERTY: 'TIL DEATH OR SALE DO WE PART

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You and your partner have searched diligently for ages. You eventually find your dream property. You make an offer, and it was accepted. All of the big decisions are behind you now, right? Wrong. The fun is just beginning, and I am not talking about décor choices.

Many buyers do not realize that title to real property comes in more than one form. One of the decisions that a buyer needs to make is how to take title to their new property, and it is quite an important decision. The chosen type of tenancy indicates how the ownership is legally structured and how the ownership will pass in the future.

In Pennsylvania, parties may take title in the following ways:

Tenants in Common. This option is available when there are two or more persons in whom title to real property is vested. Each party has a common or equal right to possession and enjoyment of the property, but each holds a separate, individual interest or estate in the property. Each owner may sell or otherwise encumber his or her respective interest, and dispose of it by will. If a Tenant in Common dies without leaving a will, his or her heirs inherit his or her undivided interest in the property. Note further that if the couple made unequal contributions to the purchase price when they

acquired the parcel, their respective percentage interests in the property will mirror their contributions; however, if subsequent to the marriage the couple conveys the property to themselves as Tenants by the Entireties (discussed further below), each party will be deemed an owner of an undivided one-half interest in the property.

Joint Tenants with the Right of Survivorship. It is not uncommon for couples to acquire real estate jointly somewhere between the “what are we?” conversation and marriage. Unless the deed manifests a different intention, the couple will own the property as Tenants in Common. Joint Tenants with the Right of Survivorship is an ownership option that is also available when two or more persons hold title to real property jointly and with equal rights to share in its possession and enjoyment during their respective lives. Upon the death of one of the Joint Tenants, his or her interest in the property passes to the surviving Joint Tenant or Tenants. A Joint Tenant is precluded from encumbering his or her interest in the property without the consent or joinder of all of the Joint Tenants.

Tenants by the Entireties. Think of this option as a Joint Tenancy, like discussed above, but with an asterisk, and that asterisk being that the two

parties in ownership are married. This option is not available to parties contemplating marriage; only married individuals can hold title to property as Tenants by the Entireties. This title has the survivorship quality of a Joint Tenancy; however, neither spouse can convey his or her interest. Upon the death of one spouse, full title passes to the surviving spouse. Absent a clear, written manifestation to the contrary, neither spouse can alienate the right of survivorship as long as the marriage is intact. This form of ownership has an added benefit of protecting both spouses from the debts incurred solely by one spouse.

Ultimately, the purchasing parties will need to consider their future intentions with the real estate. What should happen upon one party's death? What could be the effect of a divorce? You may not have these answers at the time of your purchase, but it would be in your best interest if you did.

Norris McLaughlin provides full-service legal counsel to individuals, families, and businesses throughout Pennsylvania, New Jersey, and New York. Please visit us online at www.norrismclaughlin.com for more information. If you have any questions about this article, please feel free to contact ccurcio@norriss-law.com or 484-765-2214.