

MONEY | ADVICE

Methods of Transferring & Owning Real Estate

– George S. Fekaris, Esq., Morello Law Group, P.C.

Real estate is often one of the most valuable assets owned by individuals or businesses. As such, it is important to be familiar with various forms of ownership to determine how best to protect against lawsuits and nursing home costs, transfer the property most efficiently to heirs, to reduce or eliminate taxation at death. This brief outline can provide a very basic introduction to terms and concepts in this very complex area of law that affects nearly everyone of us on a daily basis. Feel free to “clip and save” this article for future reference.

TRANSFERS OF OWNERSHIP IN REAL ESTATE

A number of different types of documents transfer ownership interests in real estate. The most commonly used transfer documents are warranty deeds, quitclaim deeds, and fiduciary deeds. Land contracts and other transfer documents are also used, depending on the circum-

stances. A party who owns land is said to have title to the land. In Michigan, ownership can be created in the name of a single person or entity, or in the names of multiple parties.



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TYPES OF REAL ESTATE OWNERSHIP TRANSFER DOCUMENTS

Warranty Deeds

A warranty deed is the most common type of deed used in transactions that do not involve related parties. With a warranty deed, unless excep-

tions are listed in the document, the seller guarantees to the buyer that the seller has complete ownership in the property and that there are no exceptions to the title being transferred. The buyer usually seeks a warranty deed in real estate transactions.

Quitclaim Deeds

A quitclaim deed transfers to the buyer only the interest in the real estate that the seller actually holds,

if any. The seller does not give the buyer a guarantee of title in a quitclaim deed. Therefore, buyers who receive a quitclaim deed bear the risk that they may not receive the title that they are expecting. Quitclaim deeds are often used for transactions that involve related parties. They are also often used to transfer property to trusts, for gifting, to correct defects in title, and other appropriate circumstances.

Fiduciary Deeds

A fiduciary deed is a deed used by a seller who holds title in a representative capacity. A fiduciary deed is common when the seller is a trustee, the personal representative of an estate, or a conservator. A fiduciary deed states that the seller is guaranteeing that the seller has not done anything which would have an adverse affect on the title of the property while the seller has had control over the property.

METHODS OF REAL ESTATE OWNERSHIP BETWEEN MULTIPLE PARTIES

In General

Property may be owned by one or more people. Property may also be owned by one or more entities or a combination of the foregoing. The terms “tenancies in common,” “joint tenancies,” and “tenancies by the entireties” are used to describe types of co-ownership of property.

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PROFILE | BIO

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Education

B.A. in Business Administration, Michigan State University; J.D., University of Detroit School of Law.

Areas of Practice

Estate and Business Planning; Trust Administration; Probate; Contested Estates; Elder Law; Medicaid and VA Planning; Corporate Counsel; Commercial Litigation; Commercial and Residential Real Estate; and Family Law.

Career

Mr. Fekaris is a member of the State Bar of Michigan sections on Probate, Elder Law and Disability Rights, Real Estate and Family Law with 25 years of experience. He is a member of the National Academy of Elder Law Attorneys and his practice centers on Estate Planning, Business Planning, Administration of Trusts and Estates, and Litigation. Mr. Fekaris is Treasurer of the Northville Educational Foundation and is a member of the Northville Chamber of Commerce and Livonia Chamber of Commerce. He is a Wayne County Mediation Tribunal Case Evaluator. Mr. Fekaris is admitted to practice in Michigan's State Courts and the Eastern Federal District Court. Mr. Fekaris is knowledgeable in the Greek language and is past president of the Hellenic Bar Association of Michigan.

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Joint Tenants

Joint tenants hold equal and undivided interests in property, with a right of survivorship. A “right of survivorship” means that when one co-owner dies, the remaining living owners continue to own the property. The deceased owner’s interest ends at death and is not inherited by his/her beneficiaries. Only a person (as opposed to an entity) may be a joint tenant. All joint tenants must join in any transfer of property.

Tenants in Common

Tenants in common have separate ownership in property but share a common right to possession. There is no right to survivorship. Unless a deed states otherwise, unmarried co-owners are presumed to own the property as tenants in common.

Unless otherwise stated, the tenants’ ownership is presumed equal. Unequal ownership may be by percentages or fractions. Each of the tenants in common must sign a deed to transfer the complete ownership of the real estate. The individual interest of a tenant in common may be transferred through a bequest in a will or a trust.

Tenants by the Entireties

With tenants by the entireties, a husband and a wife own real estate together. This form of ownership provides some creditor protection for the property. A creditor of one spouse may not go against the property to collect a debt. There is an exception for federal tax liens. A deed of real property to a husband and a wife creates a tenancy by the entireties, unless otherwise stated.

The husband and wife must act together to transfer property owned as tenants by the entireties. There is a right of survivorship so that, upon the death of a spouse, the survivor owns the property outright.

Mobile Homes

A mobile home is generally considered to be personal property, not real estate. Ownership of a mobile home is transferred by a certificate of title. However, under some circumstances a mobile home may be so attached to the real estate on which it rests that it becomes a part of the land. Under such circumstances, the home would be transferred by a deed to the land to which it is attached.

OWNERSHIP OF REAL ESTATE BY INDIVIDUALS & ENTITIES

Individuals

Persons may own property. As individual property owners they bear the responsibility for any liability associated with the property. As individuals, they also enjoy all use, rents, appreciation in value, and other benefits of ownership.

Partnerships

A partnership is a group of two or more who may own property and/or conduct business together. All partners are liable for the debts and claims arising from the real estate owned by the partnership. Limited partnerships also exist, and they generally insulate the partners against liability for debts or claims against the partnership beyond their investment.

Corporations

Corporations may own real estate. In such cases, the stockholders of the corporation have no individual interest in the real estate owned by the corporation; however, the shareholders are not individually liable for claims and debts associated with property beyond their capital investment. Corporations may be designated as “C” Corporations or “S” Corporations. The distinction between these types of corporations is how each is treated for tax purposes.

If the holder of the real estate is a C corporation, the income and deductions arising from the property are reportable by the corporation,

which is taxed separately from its shareholders.

An S corporation is a corporation that files a special tax election if it meets certain requirements. Similar to a partnership, the income, gains, losses, deductions, and credits of an S corporation are reported by shareholders on their individual income tax returns.

LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS

A Limited Liability Company or “LLC,” provides the advantages of a partnership in terms of flow-through taxation and the advantages of corporations in terms of limited liability. Michigan only requires one member for a valid LLC; however, it may have more than one member. Members may be individuals, partnerships, corporations, trusts, or other entities. LLC members are, generally, not liable for claims against and debts of the LLC. LLCs are relatively simple to maintain.

Another limited liability entity is the limited liability partnership (LLP). A partner of an LLP is not liable for the debts, obligations, or liabilities of the LLP arising from the wrongful acts, misconduct, omissions, negligence, or malpractice of other partners or of employees, agents, or representatives of the LLP. An existing partnership may be converted to an LLP.

CONCLUSION

Real estate ownership involves decisions relating to preferred types of title, what documents to use in transferring title, and what methods of ownership are best for the circumstances. Real estate owners should consult an experienced attorney for specific guidance for any particular transaction. ●

For further information about Morello Law Group’s services, please call 734-281-6464, or visit morellolawgroup.com