

## How Should Your Clients Take Title To Their Home?

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**How often has one of your clients asked you “How should I take title to my new home?”** It’s a question we get all the time as estate planning attorneys. You have the opportunity to make sure that your clients have all the benefits of rightly titled property and they will thank you for it.

### **Why is titling property correctly so important to homeowners?**

*First*, if titled incorrectly, the property owner cannot control what happens to the property after he or she dies; *second*, if titled incorrectly, the heirs can lose the property to creditors, the government, or even an ex-spouse; *third*, if titled incorrectly, the heirs will have to pay capital gain on the sale of the property.

## **Three Common Ways to Hold Title**

**Joint Tenancy:** The worst part about joint tenancy is the owner who dies first cannot control what happens to the property after his or her death. Joint Tenancy ensures that there will be a probate upon the death of the second joint tenant. Finally, the surviving joint tenant will pay capital gains tax on one-half of the property after the death of the other joint tenant.

**Community Property:** Possibly the most common way for married couples to own property. The advantage of Community Property is that the entire property receives a step-up in basis for income tax purposes at both deaths. However, the disadvantage is that half of the property is probated upon the first death and the whole property must be probated upon the second death.

**Community Property with Right of Survivorship:** Like joint tenancy, CPWROS is a he who dies last wins situation, because the surviving spouse controls the disposition of the property on her death. However, the property will go through the probate process at the second death.

### **The Fourth and Best Way to Own Property – A Revocable Living Trust:**

The best way for your homeowners to own their property is in a revocable living trust.

- ✓ A properly drafted and funded trust will avoid time consuming, expensive and public probate upon the first death and the second death. Probate is public, time consuming, and costly!
- ✓ A trust allows the Trustee to sell, encumber, or deal with the property if the owner is incapacitated.
- ✓ A revocable living trust will make sure that the right people receive the property after the death of both owners and that it doesn’t go to creditors, predators, or future spouses.
- ✓ Property received by the heirs can be sold free of any capital gain tax and can be protected from creditors and predators of the heirs.
- ✓ The property owners can utilize procedures to minimize or even eliminate estate taxes.