



# GETTING TO CLOSING, *cont.*

## Three Common Ways to Hold Title

Although there are many different ways to hold title on real property in Colorado, the information contained here outlines the three most common types found today. It is important to understand the differences in vesting as it affects what an owner can do with the property and what happens to the property upon the owner's death.

**Sole Ownership** - Any individual who owns the property solely in his/her name (identified typically as "In Severalty" on the Contract to Buy and Sell Real Estate), holds all rights to the property. The sole owner may use, encumber, rent, sell, donate, or convey it at their discretion. The owner may transfer the property through a will, trust, or beneficiary deed upon their death. If the owner does not designate what is to happen upon his/her death, the property passes on to the legal heirs.

**Joint Tenancy** - Through Joint Tenancy, property is owned by two or more persons and each person has an identically equal right to the property. Joint Tenants may use and encumber the property at their discretion, with all owners being in agreement on use or encumbrance. Joint Tenancy must be established at the same time by one conveyance deed or instrument, and rights of the owners exist for the same precise amount of time. Right of Survivorship applies to properties held in Joint Tenancy. This means that upon the death of one owner, the surviving owner/s hold full right to title of the property. In order to insure title is vested in the survivor/s, the death certificate for the decedent must be recorded in the county in which the property is situated. In some cases, if the death certificate does not identically match the way the owner held title on the specified property (i.e. using a middle initial versus a full middle name), a supplemental affidavit must be completed and recorded along with the death certificate. It is common for married persons to hold title as Joint Tenants so that title will be fully vested in the surviving spouse's name upon death of the other spouse. Joint Tenancy is also common for friends, relatives, associates, or business partners if they wish for the property to pass on to the surviving owner(s) in the case of death.

**Tenancy in Common** - With ownership vested as Tenancy in Common, two or more persons may have ownership interest. A person who owns a percentage of the property is known as a Tenant in Common, and each such tenant owns an undivided interest in the real property with no Right of Survivorship. Each tenant has a right to possess, sell, or encumber the property based upon their percentage of interest. The percentage of each tenant does not need to be equal, but the fractional interests by the Tenants in Common collectively must total 100% in the property. Tenants in Common may sell their interest in the property to another party. They may also designate the transfer of their ownership through a will, trust, or beneficiaries deed upon their death. It is important to note that upon such death, title is held in the estate of the decedent and a probate case must be opened with the courts establishing a Personal Representative authorized to sign on behalf of the estate. A Personal Representative's Deed must be used to convey the ownership interest of the estate. If a beneficiaries deed is applicable, title automatically transfers to the grantee(s) of that deed upon death.

Property owners should seek legal counsel with any questions or concerns about ownership rights and conveyance based upon vested title in real property.