

## Chapter-7

### Part-2

#### **Type of Ownership**

In Colorado, you may hold title to real property in several different ways. Real property refers to land, as well as to whatever is erected or growing upon or affixed to that land. Ownership of what lies underground, such as mineral rights, water, oil, mining rights, etc., may or may not be a part of the real property. The way property is titled is important because it affects what happens to the property during your lifetime and upon your death.

#### **The principal types of ownership are:**

1. Sole ownership
2. Tenancy in common
3. Joint tenancy (right of survivorship)
4. Life estate

You should know what type of ownership you have. This will tell you what your rights are concerning property which you fully or partially own.

#### **Sole Ownership**

If you own property solely in your name, you own all of the rights to that property. You can use it, rent it, sell it or give it away. If you want to transfer property that is solely in your name to a person or entity on your death, then you may do so by a will or trust. If you do not designate whom you want to receive your property, the property will pass to your legal heirs at your death.

#### **Tenancy in Common**

If you own property with another person, then by law you own that property as a “tenant in common” unless the ownership document states otherwise. A tenant-in-common is a person who owns a percentage of the entire property. For example, if two parties purchase property, and each has contributed equally to the purchase, then the parties can agree that each owns one-half, or 50 percent, of the property. You may sell this one-half interest to others. You also may transfer this interest to others through a will or trust.

If you are a tenant-in-common, you may appoint a specific person or persons in your will to receive your interest. If you do not appoint a specific person or persons to receive your interest, then your interest will pass to your heirs. The other tenants-in-common do not become the owners of your interest on your death. Upon your death, the person(s) appointed receives your interest in the property from your estate. That person(s) will then hold your interest in the property with the other tenants-in-common.

Tenants-in-common, who cannot agree on how to sell or manage the property, usually have to go to court to settle their differences.

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

In Colorado, persons may hold property with a right of survivorship. Creating a right of survivorship is a way of managing property. A right of survivorship assures that when the owner dies, the remaining co-owner(s) will automatically receive the deceased owner's share of the property. For example, a husband and wife often hold property together in joint tenancy with this right of survivorship.

You also may hold title with someone other than your spouse. You and the other owner will hold property with the right of survivorship. Friends, relatives and business partners use this form of ownership when they want to own property jointly. This allows the property to pass to the survivors on death.

The party who dies first cannot transfer by will the property that is held subject to a right of survivorship. If you own property in this way and you want to pass that property to a particular person or entity, then you should contact a lawyer for advice.

Creating a right of survivorship requires special words when used in a deed, trust or will.

Creating a right of survivorship in a deed has many possible legal consequences. Several consequences are:

1. If you sign a deed transferring real property to yourself and someone other than your spouse, and you and this other person have the right of survivorship, then you may have made a gift. This may require you to file a federal gift tax return.
2. Once you sign the deed, you cannot take the property back. You will have trouble selling or mortgaging the property without the agreement and signature of the other person you have named on the deed.
3. The property held with a right of survivorship passes to the survivor. Even if you name someone else to receive property in your will, the deed to that same property will control who receives it.

There are risks in creating a right of survivorship:

1. If you name someone as a joint tenant with the right of survivorship on a bank account, then that person can take part or all of the money out without your permission. ([See Part III](#) of this chapter for more information on joint accounts.)
2. A right of survivorship may cause the property to go to someone other than your intended heirs.
3. Sometimes a creditor of the other person you named on your property with a right of survivorship can take all or part of that property to pay debts.
4. There may be adverse gift and/or estate tax consequences to titling property in joint tenancy.

You should talk to a lawyer about the advantages and disadvantages before trying to create a right of survivorship for another person.

## **Life Estate**

You may create a life estate to protect a person's right to live on a piece of property and receive any income generated by that property. At that person's death, that property passes

to another person. For example, if you want to give your property to a friend or to your children, but you want to live on that property or receive income from that property until your death, then you would create a life estate. You would do so by deeding the property to whomever you want to have it on your death and reserving a life estate to yourself until your death.

You also may create a life estate by a will. For example, suppose you want your friend, Harry, to own property. When he dies, you want the property to pass to your brother, Bill. You can let Harry keep the property until his death by creating a life estate in your will. On Harry's death, you can have the property go to Bill. Bill's interest is called a remainderman's interest.

There are many ways that a person can hold title other than those described. If you have any questions about the nature and extent of property ownership, you should talk to a lawyer.

### **Transferring Ownership Interests of Assets**

You can transfer your interest in your house and other real property to another person in several ways:

1. By a sale.
2. By giving it away during your lifetime.
3. By giving it away upon death, either by a will, a trust agreement (such as a living trust), or through a right of survivorship.

You may sell property for cash or for installment payments (money paid over a period of time). You secure the balance due by a mortgage, a deed of trust or a land sale contract. A deed of trust is the most common method of securing payment. Each of these ways to secure the transfer of property has special characteristics. Your choice should be made with sound legal advice.

Before you choose between a mortgage, deed of trust or land sale contract, request that your advisor explain the differences. Also, find out how those differences affect your particular transaction. Unless you are familiar with real estate transactions under Colorado law, you should not try to create your own legal documents. Only a lawyer or title company should prepare title documents.

Often, older adults want to give away their property. The reasons for this may include:

1. They want to give property to a friend or relative,
2. They want to avoid payment of estate taxes,
3. They want to reserve and protect their estate before incurring large medical bills so there is something left to give away, or
4. They are asked to by friends or relatives.

There are risks in deeding away your property. For example, suppose you deed your property to your adult child in return for a promise from that child that he or she will take care of you and let you live in the house. Then your adult child breaks his or her promise and tells you to move out. You would not have any legal remedy to reclaim that property since your adult child now owns it. A better alternative may be to create a life estate for yourself in the property. A

life estate would allow you to keep the legal right to live on the property. ([See Chapter 2](#) on the Medicaid transfer rules.)

Do not try to accomplish estate planning or preservation of your estate without first consulting an attorney.

## **Deeds**

If you want to transfer your interest in real property, you must do so in writing. The document used to transfer your interest is called a deed. There are four types of deeds in Colorado:

1. General warranty deed,
2. Special warranty deed,
3. Bargain and sale deed, and
4. Quit claim deed.

A general warranty deed tells the person to whom the property is being sold or transferred that you are warranting the title and making other warranties about the property. This means that you will guarantee the title except for any conditions specifically listed in the deed and that you make other guarantees about the property.

A special warranty deed is similar to a general warranty deed, but does not give all the warranties that a general warranty deed gives.

A bargain and sale deed transfers whatever title or interest you may have at the time of the transfer or later acquire. However, it does not give any warranty that your title is good.

A quit claim deed, on the other hand, only transfers whatever title you may have at the time of the transfer.

You must give the deed to the person receiving the property. It does no good to fill out a deed, sign it and keep it in the desk drawer or other place for safe keeping. If you want to give your real property to someone, you must complete the deed properly. You must sign the deed in front of a notary public. You must give the deed to the person you want to receive the property or you may record the deed in the Clerk and Recorder's office in the county where the property is located. Once you give your property to someone else, it becomes theirs, and you cannot take it back.

A deed is not a will and does not legally operate like a will. To give property to someone on your death, you must set up a right of survivorship by deed, as discussed above, set up a trust, or set up a transfer of your property through your will.

There are a few practical matters you should know about completing a deed:

1. The property legally must be described by lot and block numbers, if it is located in a subdivision.
2. It must be described by metes and bounds or a sectional description if not in a subdivision. A tax lot number or street address is not enough.
3. The deed must state what was given or paid (called consideration) for the property. If the property is a gift, the deed can say that the consideration is love and affection.
4. Never sign a deed someone else has prepared for you, unless you know and

understand the results.

5. Once a deed has been received or delivered, it must be recorded with the county clerk or recorder where the property is located.

All deeds, mortgages, contracts and other writings concerning ownership interests in real property should be recorded. This protects you and the person receiving the property. You could lose your title to the property, if the deed is not recorded, if the property is sold again by the same person who transferred it to you. An unrecorded deed also could create problems with transferring the property in the future.

## **Power of Attorney for Real Property**

You may use a Power of Attorney to give another person the same legal authority as yourself. A Power of Attorney can be general or special.

A general Power of Attorney gives authority to another to act on your behalf in all your affairs. A special Power of Attorney (also called a limited Power of Attorney) allows a person to act in your behalf (for you) only on specific issues, such as selling a business or a piece of property. You may place special limitations on a general Power of Attorney as well, such as prohibiting the sale of a particular property.

If you want another person to sell or transfer your real property, you should specifically say so in the Power of Attorney. It must be recorded with the county clerk or recorder.

If you sign a Power of Attorney, but later decide that you do not want the person appointed to act for you, you must revoke the Power of Attorney. You must revoke it wherever your property is located and where the Power of Attorney was recorded. The Power of Attorney automatically will be revoked upon your death.

## **Gifts**

A gift is a voluntary transfer of personal or real property. The person giving the property, called the donor, receives nothing in return. The donor must intend to make the gift. For a gift to be completed under the law, the gift must be delivered and the person receiving the gift must accept the gift.

Most gifts are made during the lifetime of the donor. Once this type of gift is given, it cannot be taken back unless the person receiving the gift agrees and actually returns it. You cannot make a gift that is to take effect on your death unless you include that gift in a will or a trust.

A gift must be delivered to be valid. For example, suppose you want to give a special ring to your niece. If you put a note on it saying, "This ring is for my niece when I die," the gift will not be valid because it was not delivered.

If you want to give something that is very large, such as a piano, you may do so by symbolic delivery. Symbolic delivery occurs when you give something that represents what you actually want to give, such as a written description of the item or a model of it.

Sometimes a person may be too sick to give the actual gift item. In this situation, a constructive delivery means that the person receiving the gift is given the means of receiving the gift. For example, you may give that person the keys to a safety deposit box or to a car.

If there is a dispute, the court will decide whether the donor intended to make a gift, whether there was delivery and whether the gift was accepted.

### **Sale of Residence Tax Exemption**

The capital gains tax taxes the difference between the original price of the house (plus improvements) and the selling price (assuming you sell your house for more than you paid for it). However, you may be exempt from this tax if you meet certain conditions.

You must have used the house as your principal residence for two of the last five years before the sale. If you qualify, you do not have to report the first \$250,000 of the gain. If you and your spouse file a joint income tax return and share the residence, then the two of you do not have to report the first \$500,000 of the gain. For example, if you paid \$50,000 for your house and sell it for \$250,000, you will not have to pay capital gains taxes on the \$200,000 profit. This exemption may not be used more than once every two years. There also are favorable rules for spouses who die or must be cared for outside the home within the two years prior to sale of the residence.

### **Property Tax Credit Program**

The Denver Public Schools, in cooperation with the City and County of Denver, offer property tax credit assistance for individuals who:

1. Are 60 years of age or older.
2. Own property in the City and County of Denver and reside in that property. Note that:
  - a) A past property tax statement must be submitted to the Office of Volunteer Services for verification purposes; and
  - b) Should the applicant sell or move from that property, the Office of Volunteer Services must be notified within 30 days;
3. Volunteer 100 hours annually in the Denver Public Schools. Note that:
  - a) Hours of service, for example, may begin accruing in August, and must be completed by Nov. 1 of the following year. (Contact the Office of Volunteer Services for dates for the current year);
  - b) Completed hours must be submitted to the Office of Volunteer Services by the required date for application to that year's property tax bill (i.e. hours completed in 2004 for property tax incurred for 2004) due the following tax year (2005). (Contact the Office of Volunteer Services for dates for the current year);
  - c) Hours must be verified by the school principal, teacher, program supervisor and/or department head at regular intervals;
  - d) Hours volunteered over the 100 cannot be carried over;
  - e) Only one credit may be credited per year per household.

The Denver Public Schools can offer 100 total credits annually. Eligible citizens will be numerically placed on the property tax credit "active" list as they register with the Office of Volunteer Services. Citizens who register after number 100 will be placed on a waiting list until all active volunteers (numbers one-100) have had an opportunity to complete and verify

hours. If positions become available, waiting list volunteers will move to the active list. If they cannot move to the current year list, then they will have top number priority on the credit list for the following year.

The Denver Public Schools will issue a check for \$250 made payable to the Treasurer, City and County of Denver, to each 100 qualifying citizens. Program participants will then be responsible for sending the check, with the balance due, to the Denver Treasury.

Contact the county treasurer or assessor in your county to find out if the county has a similar program.