

WHY VESTING IS IMPORTANT WHEN BUYING A HOME



When buyers acquire title to real estate, it is important that the buyer's deed have a vesting, this is accomplished during the escrow closing. This is to make certain that co-ownership and single ownership are not confused by what is implied versus what is intended. For example, if a single person acquires title with no vesting, such as John Smith, as opposed to the proper vesting of John Smith, a single man. In this example the unintended consequence could mean that John Smith did not acquire title as a single man and could, in fact, have a spouse which could create a community interest in the property.

Another unintended consequence that could arise is when John Smith gets married, there could be a requirement, by the Lender, the Title Company or Escrow Company for the spouse to join in the execution of real estate documents when he sells his property. This could imply a community interest when in fact that was not what was intended.

Another example is when two individuals take title without a vesting. For example, if a brother and sister take title incorrectly as John Smith and Jane Smith, with no vesting, as opposed to the proper vesting of John Smith and Jane Smith, as Joint Tenants. The unintended consequence is that John Smith and Jane Smith became tenants in common. In this case, if one of the parties has passed away, the heirs would have to probate that person's estate to transfer the title to the proper heir. If they had acquired title appropriately, the surviving joint tenant would only have to record an Affidavit Death of Joint Tenant and the surviving joint tenant would acquire the deceased's joint tenant's interest.

Not only are there legal unintended consequences, if the vesting is wrong, there are also unintended tax consequences that could arise. To assist you, we have provided a web page of common ways to hold title. These methods of holding title should be discussed by the buyer(s) and their accountants or attorneys to confirm what legal and tax preferences are right for them.

<https://www.titleadvantage.com/mdocs/WaysToHoldTitleCA130.pdf>

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