



In this newsletter, and with the guidance and assistance of our office's general legal counsel, I briefly explain different types of property ownership and how they may affect property tax exemption and Save Our Homes (SOH) protection. Besides taxes, there are other important legal and financial considerations in type of property ownership, that are not discussed here. Therefore, property owners are strongly advised to obtain and carefully consider the advice of accredited legal and financial professionals before making deed changes or doing any other actions that may affect ownership.

We often hear from taxpayers -- all well-intentioned -- who lost or seriously compromised their valuable exemptions or Save Our Homes (SOH) protection when they made "do-it-yourself" changes to a deed. A qualified lawyer consulted beforehand could have prevented problems.

The information below should help you better understand the key differences between the most common forms of home ownership. Keep in mind these are VERY simplified explanations of some rather complicated legal issues. Your deed is a document or written legal instrument which, when executed and delivered, conveys an interest in or legal title to a property. Deed recording is the process of registering a transfer of real property with the Broward County Records, Taxes and Treasury Division.

There are many variations (and legal and tax consequences) of ownership types, but this list should give you a basic understanding of these important concepts:

Tenants in Common (TIC): Each of the owners owns a share of the property, which may be sold separately. Florida law presumes equal ownership interests, unless specific percentages are written in the recorded deed. See Section 689.15, Florida Statutes. Example: "To Bill Johnson and Mary Smith" would give Bill and Mary ownership of 50% each. **IMPORTANT:** Unless a different type of ownership (see below) is specified in the deed, Florida law ALWAYS defaults the co-ownership to TIC. Under TIC, if only one of two owners files for Homestead, the property would get 100% of the \$25,000 Homestead Exemption -- but only 50% (the amount owned by the one who filed) of the assessed value is protected by the SOH cap.

Tenants by the Entirety (TBTE): This applies only to a husband and wife, who should be identified in the deed as "husband and wife" or "a married couple." This TBTE status -- which is automatic when that language is stated -- gives each spouse overlapping 100% interests, full exemption coverage (when one files), and rights of survivorship. This interest automatically converts to TIC status when the divorce is finalized (unless or until the property is transferred to one spouse pursuant to the divorce settlement or court order). Also, if co-owners marry after previously purchasing a property as single persons, please let us know about the marriage (i.e., copy of marriage certificate) so we can update our records.

Joint Tenants with Right of Survivorship (JTRS): This gives two or more unmarried co-owners legal rights to property largely similar to those granted to TBTE owners. Example: "To Mark Wright and Bill Johnson, as joint tenants with right of survivorship." The JTRS co-owners would each own overlapping 100% interests -- and any one owner filing for homestead would qualify for 100% of the homestead and SOH coverage. When a JTRS co-owner dies, all remaining title interests are automatically divided between the living JTRS co-owner(s). We strongly urge all JTRS owners living on the property to file for Homestead Exemption.

Life Estate (LE): This is the present interest to use a property for life, but leaves the remainder interest (i.e., title after the life estate holder dies) to one or more future owners. Example: "To Mary Smith for her life, with the remainder to her sons Bill Johnson and Steve Johnson." Mary (the life estate holder) is the only person eligible for Homestead during her lifetime. It is also possible to create joint life estates allowing more than one person to have full rights to use the property at the same time (example: an elderly couple retain joint life estates before leaving the remainder to their child). **IMPORTANT:** There are different ways to create life estates -- some allow for more flexibility than others as to a future sale of the property -- so discuss this with an attorney to learn more.

Remainder: This is the future interest that follows a life estate. Example: "To Mary Smith for her life, with the

remainder to Bill Johnson." Under Florida law, Bill does not have any present right to possess the property until Mary dies. So long as Mary (the life estate holder) is alive, Bill (the remainder interest) is not eligible to claim Homestead on the property. This is true as a matter of Florida law even if Bill is living on the property with Mary's permission during her lifetime.

Trusts: Deeding ownership of a homesteaded property into a trust (revocable, irrevocable, land trust, etc.) is another common way for maintaining homestead on a property while avoiding probate and taking maximum advantage of federal tax laws. However, as these are rather complex to establish correctly -- in that the trust must be formally created before the property ownership is deeded to the trust -- speak with your attorney and/or accountant instead of attempting to do this on your own.

Partnerships, LLCs, and Corporations: You will LOSE your Homestead Exemption (or be unable to qualify for Homestead) if your property is deeded to a partnership, LLC or other corporation (including a Chapter-S corporation). This is true even if you are the sole partner or shareholder in the entity. Florida courts have ruled that these entities are simply not eligible to qualify for Homestead. See: *Prewitt Management Corp. v. Nikolits*, 795 So.2d 1001 (Florida 4th District Court of Appeals, 2001).

Many important documents, including your deed are already available for free online at Broward County's Records, Taxes and Treasury Division's website. Older deeds prior to 1977 and recorded deeds utilizing social security numbers must be ordered in person or by written request. Broward County charges a nominal fee for reproduction (\$1.00 a page/\$2.00 certified).

To search County Records, simply go to <https://officialrecords.broward.org/AcclaimWeb> and enter the public search field. Search by the name of the homeowner and you will be shown applicable property data enabling you to retrieve and print a copy of the recorded deed. You can also find this information on our website at www.bcpa.net by simply clicking on the "book number", located under the "sales history" chart on the property record page to link to the deed information.

If my office can ever be of assistance to you, please do not hesitate to contact us directly at [\(954\)357-6830](tel:9543576830).

Take care,

Marty Kiar
Broward County Property Appraiser



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