



## Andrea L. Jakob, PA

*Legal knowledge, human wisdom:  
Helping you plan today, so you can  
sleep better tonight.*

# How to Own Your Real Estate

Your real estate encompasses not only your primary residence but also any vacation homes, rental properties, or even vacant land you may own. The ideal form of ownership varies depending on the type of property and your individual circumstances.

### **Your Primary Residence**

How you own your primary residence affects your control over it while you are alive, its level of protection from creditors, and what happens to it after you pass away. The most suitable way to own your home often depends on your goals and the types of ownership for real estate that are available in your state.

### **A Vacation Home**

For some families, their vacation home has significant financial and emotional value. How you hold title and what happens to the property in the future are important considerations. Vacation homes may also be treated differently from primary residences for tax purposes, so careful planning is essential to ensure that what you would like to happen with your vacation home is accomplished.

### **Rental Property**

Because rental property serves as an income stream rather than a residence, protecting it from lawsuits and creditors is usually the primary concern and main goal for rental property owners. As a landlord, you may face a higher probability of lawsuits arising in connection with the property as renters come and go.

Transferring ownership of the rental property to a limited liability company (LLC) (discussed below) is one potential option. One benefit is that any creditor is generally limited to the assets of the LLC, so, for example, if a renter is injured on the property, they can seek satisfaction of any claims only from other accounts and property owned by the LLC, not from your personal accounts and property or those of any other members of the LLC. In addition, ownership by the LLC may protect the rental property from your personal creditors. However, if you are forming a single-member LLC, it is important to have us check state law to ensure that creditor protection is available.

You can own title to real property in the following ways:

### ***Sole Ownership***

Owning your home in your own name allows you to take advantage of certain tax benefits that may be available for primary residences. While you have full control over the real estate during your lifetime, your primary residence will not automatically transfer to your heirs at your death without additional planning; it will likely need to go through the lengthy, expensive, and public court process known as *probate* first.



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### **Tenancy by the Entirety**

*Tenancy by the entirety* is a type of ownership available only to married couples in Florida. This ownership structure treats both spouses as one unit who own the home together, so neither spouse can sell or mortgage the home without the other's consent. Tenancy by the entirety also protects the home from the creditors of one spouse. In other words, a creditor of only one spouse generally cannot force the sale of the home to satisfy that spouse's separate debt. When one spouse dies, ownership of the property automatically transfers to the surviving spouse, avoiding probate.

### **Revocable Living Trust**

Another option is to place your primary residence in a *revocable living trust*. This type of ownership allows you to retain control of your home during your lifetime while ensuring it transfers according to your wishes without court involvement upon your passing. In some states, it may be possible to preserve certain protections, such as tenancy by the entirety when the home is held in a *joint revocable trust*, but this is not always the case.

If protecting your home from creditors during your lifetime is your primary concern, an *irrevocable trust* may be the appropriate choice. However, irrevocable trusts may require you to give up some control of the property during your life because the trust owns the home and manages it according to rules you set when you created the trust.

### **Joint Ownership or Tenants in Common**

In a *tenants-in-common* ownership structure, two or more people own property together. Each owner can specify in their estate plan what happens to their share. However, one co-owner's creditors may be able to claim the debtor's share, potentially putting the entire property at risk of liquidation to satisfy that co-owner's outstanding debt. In addition, when one co-owner dies, probate may become necessary to transfer their share.

### **Protection from Creditors**

In some situations, your primary residence may have extra protection under the law if you ever face financial difficulties, such as bankruptcy. Many states provide a *homestead exemption*, which can help protect part or all of the value of your home from certain creditors. Protections may vary by state and may not cover all types of debts, so meeting with a knowledgeable professional is important if you have concerns.

### **Ownership by a Limited Liability Company**

Although not commonly used to hold a primary residence, an LLC can be used to hold other real estate, such as your vacation home or investment property, by creating a legal separation between you and the property. This option generally protects your personal assets from lawsuits or creditors



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arising from the use of the property. With an LLC, you can also establish rules for use, maintenance, and decision-making. You may consider this option an ideal solution if multiple family members or partners share ownership.

Having an LLC own your vacation home provides limited liability from outside claims. Creditors of the LLC (e.g., a guest who is injured on the property) generally cannot reach your personal assets in addition to the LLC's assets; the LLC's liability is limited to its assets. At the same time, lawsuits against you as an individual generally cannot reach the property, which can be incredibly helpful if you wish to pass the vacation home on to the next generation without worrying about each new member's financial situation. While LLCs provide liability protection, they do not cover all situations. For example, if you are the sole member of an LLC, certain creditors may still be able to reach the property to satisfy claims.

It is important to consult with us and your tax advisor to ensure that transferring your vacation home to an LLC will not cause an increase in your property taxes or other unintended consequences, especially if the property has been in your family for a long time.

### **Contact Us Today**

Whether you are concerned about your primary residence, a family cabin, or rental property, we are here to assist you in protecting your valuable real property. Given the various considerations in selecting a form of ownership, it is important to have the right advisors by your side. Contact us to discuss your current and future real estate ventures and the best way to protect them for generations to come.