



Taking Title in Florida

How you take title has multiple implications for you, your heirs, and others. The following are some general examples of some ways to take title in Florida. It is not a comprehensive list, nor should it be relied upon for someone's decision in how to take title. Since there are many factors and implications involved in how someone takes title, a real estate attorney should always be consulted before making this decision.

	Tenancy in Common	Joint Tenancy with Right of Survivorship	Tenancy by the Entirety	Regular Life Estate	Enhanced Life Estate
How Created	Deed to two or more grantees, who are not married to each other, without reciting a type of tenancy. Or, deed to any two or more grantees, "as tenants in common" or similar language without stating that there is a right of survivorship.	Deed to natural individuals that expressly provides for a right of survivorship. All tenants must have the "4 unities" of time, title, interest and possession. That is, they must acquire their JTWROS interest at the same time, by the same instrument, in the same proportionate share and with all having the right of possession.	Deed to a married couple which does not state a different type of tenancy, such as "tenants in common." If the parties were not married to each other at the time of the deed but later got married, a deed from themselves to themselves as a married couple would be necessary to create a tenancy by the entirety.	A life estate is an estate measured by the duration of a natural person's lifetime with the remainder interest going to someone else.	The deed creating the life estate gives the life tenant the power to sell, convey and mortgage without joinder of the remainderman.
Examples	John Smith, a single man, and Sally Jones, a single woman John Smith and Sally Jones, as tenants in common.	John Smith and Sally Jones, as joint tenants with rights of survivorship John Smith and Sally Jones, or their survivor John Smith and Sally Jones, JTWROS.	John Smith and Sally Smith, husband and wife John Smith and Sally Smith, as an estate by the entireties Sarah Smith and Sally Jones, a married couple John Smith and Sally Smith (where John and Sally were in fact married to each other at the time of the deed).	Sarah Smith, for life, with remainder to Larry Smith Sarah Smith, for life, with the remainder to Larry Smith and Sam Smith Sarah Smith, a single woman, grantor, to Larry Smith, reserving a life estate in Sarah Smith.	Sarah Smith, a single woman, grantor, to Sarah Smith, for life, without any liability for waste, with full power and authority in said life tenant to sell, convey, mortgage, lease or otherwise dispose of the property described herein, in fee simple, with or without consideration, without joinder of the remainderman, and with full power and authority to retain any and all proceeds generated thereby, and upon the death of the life tenant, the remainder, if any, to Larry Smith, as grantee.

	Tenancy in Common	Joint Tenancy with Right of Survivorship	Tenancy by the Entirety	Regular Life Estate	Enhanced Life Estate
Transferability of Interest	Each co-tenant may transfer or mortgage his or her own interest without joinder of the other.	Each co-tenant can transfer his or her own interest without joinder of the other, but a conveyance by a co-tenant will sever the survivorship aspect of the joint tenancy. Example: A and B are in title as JTRWOS. A conveys to C. B and C will not have a JTWROS and upon the death of either, probate will be necessary to transfer title of that deceased tenant's interest.	Both spouses must execute a deed or mortgage to convey or mortgage the property.	The life tenant can convey his or her life estate to someone else without joinder of the remainderman, but the person who is conveyed the life estate owns a life estate measured by the original life tenant's life, not measured by the grantee's life. A remainderman can convey his or her own interest without joinder of the life tenant.	The life tenant has the full power and authority to convey or mortgage not only the life estate but the entire interests in the property to another party without joinder of the remainderman. A remainderman can execute a deed or mortgage of that interest, but that deed or mortgage is still subject to the power of the life tenant to sell or mortgage the entire ownership interest in the property.
Judgment Lien Attachment	A judgment against one tenant attaches to that tenant's interest and would need to be cleared to convey clear title to the property.	A judgment against one tenant would attach to that tenant's interest and would need to be cleared to convey clear title to the property. Upon the death of a joint tenant, a judgment lien against that tenant's interest is also extinguished.	A judgment lien against one spouse does not attach to the property if the spouses remain married. However, a federal tax lien against one spouse does attach. A judgment lien against both spouses attaches.	A judgment lien against the life tenant would attach to that life tenant's interest but would be extinguished upon the death of the life tenant. A judgment lien against the remainderman would attach to that remainder interest, even if the life tenant is still alive.	A judgment lien against the life tenant would attach to that life tenant's interest but would be extinguished upon the death of the life tenant. A judgment lien against the remainderman would attach but subject to the power of the life tenant to convey or mortgage the entire interest during the lifetime of the life tenant. Therefore, the life tenant can convey or mortgage the property without requiring the judgment lien against the remainderman to be released.
Necessity of Florida probate proceedings upon the death of a party	Upon death of a co-tenant, title to that co-tenant's interest would descend to the heirs and beneficiaries of the decedent and probate proceedings on the deceased tenant would be necessary.	Upon the death of a joint tenant, the surviving tenant becomes the sole owner and a probate of the deceased joint tenant is unnecessary.	If the married couple was in fact married when they took title and remained married continuously and without interruption until the death of the deceased spouse, the surviving spouse becomes the sole owner of the property and a probate of the deceased spouse is not necessary.	Upon the death of the life tenant, the remainderman becomes the owner of the property and a probate of the life tenant is unnecessary. Upon the death of a remainderman, a probate of the remainderman will be necessary.	Upon the death of the life tenant, the remainderman becomes the owner of the property and a probate for the life tenant is not necessary. If the remainderman is deceased, but the life tenant is still alive, the life tenant can convey or mortgage the property without the need of a probate on the remainderman. If both the life tenant and the remainderman are deceased, a probate will be necessary on the remainderman.