



There are a variety of ways taxpayers can hold title to investment real property. To see a simple comparison, visit: [Holding Title to Real Property, a Comparison of Three Different Methods](#). This article will address tenant in common ownership of real property.

Tenant in common ownership, sometimes called a tenancy in common, is a method of holding title to property involving multiple taxpayers that originated in English Common Law. Currently, all states recognize tenant in common ownership. Where a tenancy in common arrangement is created, each individual owner, called a “co-tenant” or “co-owner,” is said to own an “undivided interest” in the property. There can be any number of co-owners. A significant feature of a tenancy in common is that each co-tenant has the right to use the entire property even though their respective interest in the property is generally less than 100%. This common right to use the whole property can create conflicts among the co-owners. It is generally advisable to have a written tenancy in common agreement among the co-owners covering the owners’ obligations to maintain and use the property.

In most other respects, a tenancy in common owner can deal with his or her interest in the property much like a fee owner (a person who owns the real property individually). For example, each co-owner may transfer his or her interest in the property without the consent of the other co-owners. When a co-tenant dies, his or her share of the property will generally pass to a successor through a will or through the law of intestacy to the owner’s heir or heirs who becomes a tenant in common with the other co-owners. Unlike a joint tenancy ownership arrangement, there is no right of survivorship in the surviving co-tenants.

A co-tenant’s sale of his or her interest is a sale of an interest in real property under federal tax law. Thus, a taxable gain or loss will be recognized by the taxpayer on a disposition of the property. Unlike

Compliments of:



HQ 800.282.1031 | NY 866.394.1031
apiexchange.com | info@apiexchange.com



certain other ways of holding title to property involving multiple owners, such as a partnership, limited liability company or limited partnership, each co-owner is treated as a separate seller on a sale or other taxable disposition of the commonly owned property. In the case of a pass-through legal entity, such as a partnership, the legal entity is treated as the transferor and the resulting tax liability is allocated to the partners or members. This can present a problem in situations where some partners want to liquidate their interests for cash in a taxable sale and others desire to engage in a 1031 exchange for other like-kind real property. With a tenancy in common ownership arrangement, however, each seller can elect to cash out or reinvest in like-kind property. This can be a significant advantage when ending the co-ownership arrangement with a sale of the property.

In the event a co-owner decides to engage in a 1031 exchange, the rules that apply to a fee owner are generally applied to the co-owner's interest in the real property. For example, for full tax deferral, the co-owner must reinvest all of the net equity received in the sale transaction and acquire replacement property that is worth the same or greater than the value of their tenant in common interest in the relinquished property.

Traditional tenant in common ownership should not be confused with the concept of "TIC" or "DST" ownership which are generally associated with fractional ownership in commercial replacement property set up by a commercial real estate sponsor. These sophisticated arrangements have other implications and complications beyond the discussion in this short article. To learn more about DST and TIC fractional ownership, click on [Delaware Statutory Trusts versus TIC Ownership](#).

Compliments of:



HQ 800.282.1031 | NY 866.394.1031
apiexchange.com | info@apiexchange.com