

Types of Property Ownership

The deed to a piece of real property defines the property, identifies the owner(s) of the property and defines the type of ownership that the owners have in the property. In New Mexico, legal title to property is usually held in one of three ways: sole ownership; tenants-in-common; or joint tenants.

Sole Ownership.

Sole ownership means that property is completely owned by one person and the deed to the property is in that person's name only.

Tenants-in-Common.

Property owned as tenants-in-common means that multiple people own the property together. The owners may own equal or unequal shares. Each tenant-in-common can transfer his/her portion of the property through sale, gift, or by will to anyone he/she chooses, without the consent of the other tenants-in-common. The new owner will become a tenant-in-common with the other owners.

Where more than one person owns a piece of property, it is presumed the property is held by the owners as tenants-in-common, unless the deed clearly expresses an intent to pass the property in some other manner (for example, as joint tenants as described below).

Joint Tenants.

A joint tenancy in real property is ownership of the property by two or more people, each of whom owns the whole property in **equal, undivided shares**. Owning property in undivided shares means that, if one joint tenant dies, the other joint tenant(s) automatically becomes the owner of the deceased person's share. If there are only two joint tenants and one dies, the remaining person becomes the sole owner of the entire property. This automatic transfer is known as the "right of survivorship."

Unlike tenants-in-common, property held in joint tenancy generally cannot be passed through a will. This is because, upon the death of one of the joint tenants, the remaining joint tenants own the entire property, so the deceased joint tenant's share is not part of his/her probate estate. It is very important to remember that once a joint tenancy is created, you cannot remove a name or transfer full ownership without the consent of the other joint tenants.

Types of Deeds and Recording of Deeds

New Mexico recognizes several types of real property deeds. The most common types are warranty deeds, quitclaim deeds, and transfer on death deeds. Each type of deed expresses certain promised (commonly referred to as covenants) to the buyer/new owner.

A **warranty deed** promises that the owner/seller's title to the property is good. "Good" title means that there was nothing wrong with the title before the owner obtained title to the property. An owner who gives a warranty deed may be held legally responsible if the title is not good.

A **quitclaim deed** makes no promises regarding the title to the property. It simply releases any claim the owner/seller may have to the property. You should proceed with caution if you want to purchase property and the owner only offers you a quitclaim deed. The owner is simply transferring whatever right, title or interest he or she has in the property, if any.

A **special warranty deed** transfers title from one owner (called a grantor) to another owner (called a grantee). The title is transferred with a limited warranty of title. By signing the deed, the grantor promises that—for as long as the grantor has owned the property—nothing has happened that would cause title issues for the grantee. This promise also extends to others that may acquire title through the grantee. The grantor makes no promises about what may have happened before the grantor owned the property. Special warranty deeds place some risk on the grantor and some risk on the grantee. The grantor is legally responsible for any title issues that arose while the grantor owned the property. The grantee assumes the risk of any title issues that arose before the grantor owned the property.

A **transfer on death deed (TODD)** transfers ownership of the property upon the owner's death from the owner to the person named on the deed. No ownership or other interest in the property is transferred during the owner's lifetime. **A transfer on death deed must be recorded prior to the death of the property owner in order to become effective upon the owner's death.**

If you are going to transfer or acquire land, it is advisable to consult with an attorney to determine which type of deed is appropriate for your particular situation.

All deeds, mortgages and other documents that affect title to property must be recorded in the office of the county clerk of the county or counties where the property is located. Recording deeds to property is necessary to protect yourself and future buyers. Recording documents that affect title to real property gives "notice" to the world of your ownership of the property. If you fail to record a deed, mortgage or other document, a court may protect the rights of a person who later buys or takes a mortgage on your property without notice of your interest.