

Taking Title to Real Property

CONCURRENT CO-OWNERSHIP INTERESTS IN *California*



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The Advantages and Limitations of How You Take Title to Real Property

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-Ownership. Co-Ownership of real property occurs when title is held by two or more persons. There are several variations as to how title may be held in each type of ownership. The following brief summaries reference some of the more common examples of Sole Ownership and Co-Ownership.

SOLE OWNERSHIP

A Single Man/Woman

A man or woman who is not legally married.

Example: John Doe, a single man

An Unmarried Man/Woman

A man or woman, who have been married is legally divorced.

Example: John Doe, an unmarried man.

A Married Man/Woman, as His/Her Sole and Separate Property

When a married man or woman wishes to acquire title in his or her name alone, the spouse must consent, by quitclaim deed or otherwise, to the transfer, thereby relinquishing all rights, title and interest in the property.

Example: John Doe, a married man, as his sole and separate property.



CO-OWNERSHIP

Community Property

The California Civil Code defines community property as property acquired by husband and wife (can be married spouses), or by either, Real Property conveyed to a married man or woman is presumed to be community property, unless otherwise stated. Under community property, both spouses have the right to devise one-half of the community property. If a spouse does not exercise his/her right to devise one-half to someone other than his/her spouse, then the one-half will go to the surviving spouse without administration. If a spouse exercises his/her right to devise one-half, that half is subject to administration in the estate.

Example: John Doe, and Mary Doe, husband and wife (can be Married Spouses), as community property.

Example: John Doe, a married man.

Joint Tenancy

A joint tenancy estate is defined in the Civil Code as follows: "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy." A chief characteristic of joint tenancy property is the right of survivorship. When a joint tenant dies, title to the property immediately vests in the surviving joint tenant(s). As a consequence, when the first joint tenant dies, the property is not subject to disposition by will.

Example: John Doe and Mary Doe, husband and wife (can be Married Spouses), as joint tenants.

Tenancy in Common

Under tenancy in common, the co-owners own undivided interest, but unlike joint tenancy, these interests need not be equal in quantity or duration, and may arise at different times. There is no right of survivorship; each tenant owns an interest which, on his or her death, vests in his or her heirs or devisees.

Example: John Doe, a single man, as to an undivided 3/4 interest, and George Smith, a single man, as to an undivided 1/4th interest; as tenants in common.

Trust

Title to real property in California may be held in a title holding trust. "The trustee holds the legal title to the real property". The trustee holds title for the trustor/beneficiary who retains all of the management rights and responsibilities.

Community Property with right of Survivorship

Community Property of a husband and wife (can be Married Spouses), when expressly declared in the transfer document to be community property with the right of survivorship, and which may be accepted in writing on the face of the document by a statement signed or initialed by the grantees, shall, upon the death of one of the spouses, pass to the survivor, without administration, subject to the same procedures as property held in joint tenancy.

The preceding summaries are a few of the more common ways to take title to real property in California and are provided for informational purposes only. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended. There are significant tax and legal consequences on how you hold title. We strongly suggest contacting an attorney and/or CPA for specific advice on how you should actually vest your title.



Concurrent Co-Ownership Interests in California

The comparison below is provided for information only. It should not be used to determine how you hold title. We strongly recommend that you seek professional counsel from an attorney and/or CPA to determine the legal and tax consequences of how title is vested.

	Community Property	Joint Tenancy	Tenancy In Common	Partnership Holding Title	Trust Holding Title	Community Property Right of Survivorship
Parties	Only Married Spouses	Any number of persons (can be Married Spouses)	Any number of persons (can be Married Spouses)	Only partners (any number)	Individuals, groups of persons, partnership or corporations, a living trust	Only Married Spouses
Division	Ownership and managerial interests are equal (except control of business is solely with managing spouse)	Ownership interest must be equal	Ownership can be divided into any number of interests equal or unequal	Ownership interest is in relation to interest in partnership	Ownership is a personal property interest and can be divided into any number of interests	Ownership and managerial interests are equal
Title	Title is in the "community". Each interest is separate but management is unified.	Sale or encumbrance by joint tenant severs joint tenancy	Each co-owner has a separate legal title to his/her undivided interest	Title is in the "partnership"	Legal title is held by the trustee; beneficiary has equitable title	Title is in the "community," management is unified
Possession	Both co-owners have equal management and control	Equal right of possession	Equal right of possession	Equal right of possession but only for partnership purposes	Right of possession as specified in the trust provisions	Both co-owners have equal management and control
Conveyance	Personal property (except "necessaries") may be conveyed for valuable consideration without consent of other spouse; real property requires written consent of other spouse, and separate interest cannot be conveyed except upon death	Title is held jointly. Conveyance by one co-owner without the others breaks the joint tenancy	Each co-owner's interest may be conveyed separately by its owner	Any authorized partner may convey part or entire interest in partnership property for partnership purposes. Purchaser acquires interest that partnership owned	Designated parties with the trust agreement authorize the trustee to convey property. Also a beneficiary's interest in the trust may be transferred. <i>*If allowed by the Trust Agreement</i>	Right of survivorship may be terminated pursuant to the same procedures by which a joint tenancy may be severed
Purchaser's Status	Purchaser can only acquire whole title of community; cannot acquire a part of it	Purchaser will become a tenant in common with the other co-owners in the property as to the purchaser's interest. Other owners may remain joint tenants	Purchaser will become a tenant in common with other co-owners in the property	Purchaser can acquire part or entire interest in partnership property. If in part, the purchaser will become a tenant in common with the partnership	A purchaser may obtain a beneficial interest by assignment or may obtain legal and equitable title from the trust	Purchaser can only acquire whole title of community; cannot acquire a part of it
Death	On co-owner's death 1/2 belongs to survivor in severalty. 1/2 goes by will to descendant's devisee or by succession to the survivor	On co-owner's death his/her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship	On co-owner's death his/her interest passes by will to devisee or heirs. No survivorship right	On partner's death his/her partnership interest passes to the surviving partner pending liquidation of the partnership. Share of deceased partner then goes to his/her estate <i>*subject to the terms of the Partnership Agreement</i>	Successor beneficiaries may be named in the trust agreement, eliminating the need for probate	Upon the death of a spouse, his/her interest passes to the surviving spouse, without administration, subject to the same procedures as property held in joint tenancy
Successor's Status	If passing by will, tenancy in common between devisee and surviving spouse results	Last survivor owns property	Devisee or heirs become tenants in common	Heirs or devisee have rights in partnership interest but not specific property <i>*subject to the terms of the Partnership Agreement</i>	Defined by the trust agreement, generally the successor becomes the beneficiary and the trust continues	Surviving spouse owns property
Creditor's Rights	Property of community is liable for debts of either spouse which are made before or after marriage. Whole property may be sold on execution sale to satisfy creditor	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Creditor becomes a tenant in common	Partner's interest may be sold separately by "Charging Order" by his/her personal creditor, or his/her share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor	Creditor may seek an order for execution sale of the beneficial interest or may seek an order that the trust estate be liquidated and the proceeds distributed	Property of community is liable for debts of either which are made before or after marriage; whole property may be sold on execution sale to satisfy creditor
Presumption	Strong presumption that property acquired by Married Spouses is community	Must be expressly stated	Favored in doubtful cases except Married Spouse cases	Arise only by virtue of partnership status in property placed in partnership	A trust is expressly created by an executed trust agreement	Must be expressly stated



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