

# COMMON WAYS OF HOLDING TITLE TO REAL PROPERTY



	TITLE HOLDING TRUST	TENANCY IN COMMON	JOINT TENANCY	TENANCY IN PARTNERSHIP	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
PARTIES	Individuals, groups of persons, partnership or corporations, a living trust.	Any number of persons (can be husband and wife).	Any number of persons (can be husband and wife).	Only partners (any number).	Only husband and wife or domestic partners.	Only husband and wife and only when interest is created on or after July 1, 2001 or domestic partners created on or after January 1, 2005.
DIVISION	Ownership is a personal property interest and can be divided into any number of interests.	Ownership can be divided into any number of interests equal or unequal.	Ownership interest must be equal.	Ownership interest is in relation to interest in partnership.	Ownership and managerial interests are equal (except control of business is solely with managing spouse).	Ownership and managerial interests are equal.
TITLE	Legal and equitable title is held by the trustee.	Each co-owner has a separate legal title to his/her undivided interest.	There is only one title to the whole property. Sale or encumbrance by joint tenant severs joint tenancy.	Title is in the "partnership".	Title is in the "community". Each interest is separate but management is unified. (Similar to title being in a partnership.)	Title is in the "community", management is unified. (Similar to title being in a partnership.)
POSSESSION	Right of possession as specified in the trust provisions.	Equal right of possession.	Equal right of possession.	Equal right of possession but only for partnership purposes.	Both co-owners have equal management and control.	Both co-owners have equal management and control.
CONVEYANCE	Designated parties within the trust agreement authorize the trustee to convey property. Also a beneficiary's interest in the trust may be transferred.	Each co-owner's interest may be conveyed separately by its owner.	Conveyance by one co-owner without the others breaks the joint tenancy.	Any authorized partner may convey whole partnership property for partnership purposes.	Requires <u>written</u> consent of other spouse—or actual conveyance by deed. Separate interest is devisable by will.	Both co-owners must join in conveyance of real property. Separate interests cannot be conveyed.
PURCHASER'S STATUS	A purchaser may obtain a beneficial interest by assignment or may obtain legal and equitable title from the trust.	Purchaser will become a tenant in common with other co-owners in the property.	Purchaser becomes a tenant in common with the other co-owners.	Purchaser acquires interest that partnership owned.	Purchaser can only acquire whole title of community; cannot acquire a part of it.	Purchaser can only acquire whole title of community; cannot acquire a part of it.
DEATH	Successor beneficiaries may be named in the trust agreement, eliminating the need for probate.	On co-owner's death his/her interest passes by will to devisee or heirs. No survivorship right.	On co-owner's death, his/her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship.	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.	On co-owner's death, 1/2 goes to survivor in severalty. Up to 1/2 goes by will or succession to others. (Consult attorney with specific questions.)	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	Defined by the trust agreement, generally the successor becomes the beneficiary and trust continues.	Devisee or heirs become tenants in common.	Last survivor owns property.	Heirs or devisee have rights in partnership interest but not specific property.	If passing by will, tenancy in common between devisee and survivor results.	Surviving spouse owns property in severalty.
CREDITOR'S RIGHTS	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.	Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Creditor becomes a tenant in common.	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes a tenant in common.	Partner's interest cannot be seized or sold separately by his/her personal creditor but his/her share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor.	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. (Consult attorney with specific questions.)	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. (Consult attorney with specific questions.)
PRESUMPTION	A trust is expressly created by an executed trust agreement.	Favored in doubtful cases except husband and wife case. (See community property.)	Must be expressly stated and properly formed. Not favored.	Arise only by virtue of partnership status in property placed in partnership.	Strong presumption that property acquired by husband and wife is community.	Must be expressly stated.

This comparison is provided for informational purposes only. 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.

# COMMON METHODS OF HOLDING TITLE

## HOW SHOULD I TAKE OWNERSHIP OF THE PROPERTY I AM BUYING?

This important question is one California real property purchasers ask their real estate, escrow and title professionals every day.

Unfortunately, though these professionals may identify the many methods of owning property, they may not recommend a specific form of ownership, as doing so would constitute practicing law.

Because real property has become increasingly more valuable, the question of how parties take ownership of their property has gained greater importance. The form of ownership taken—the vesting of title—will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights involve such matters as: real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Also, how title is vested can have significant probate implications in the event of death.

The California Land Title Association (CLTA) advises those purchasing real property to give careful consideration to the manner in which title will be held. Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.

The CLTA has provided the following definitions of common vestings as an informational overview only. Consumers should not rely on these as legal definitions. The Association urges real property purchasers to carefully consider their titling decision prior to closing, and to seek counsel should they be unfamiliar with the most suitable ownership choice for their particular situation.

## COMMON METHODS OF HOLDING TITLE

### SOLE OWNERSHIP

Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common vesting cases of sole ownership are:

#### **1. A Single Man/Woman:**

A man or woman who is not legally married or in a registered domestic partnership. *For example: Bruce Buyer, a single man.*

#### **2. A Married Man or Woman as His or Her Sole and Separate Property:**

A married man or woman who wishes to acquire title in his or her name alone.

The title company insuring title will require the spouse of the married man or woman acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both spouses want title to the property to be granted to one spouse as that spouse's sole and separate property. *For example: Bruce Buyer, a married man, as his sole and separate property.*

#### **3. A Registered Domestic Partner as His or Her Sole and Separate Property:**

A registered domestic partner who wishes to acquire title in his or her name alone.

The title company insuring title will require the domestic partner of the person acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both registered domestic partners want title to the property to be granted to one partner as that person's sole and separate property. *For example: Bruce Buyer, a registered domestic partner, as his sole and separate property.*

### Co-OWNERSHIP

Title to property owned by two or more persons may be vested in the following forms:

#### **1. Community Property:**

A form of vesting title to property owned together by husband and wife or by registered domestic partners. Community property is distinguished from separate property, which is property acquired before marriage or before a registered domestic partnership, by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse or registered domestic partner.

In California, real property conveyed to a married person, or to a registered domestic partner, is presumed to be community property, unless otherwise stated. Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property, by will. *For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property.*

#### **2. Community Property with Right of Survivorship:**

A form of vesting title to property owned together by husband and wife or by registered domestic partners. This form of holding title shares many of the characteristics of community property but adds the benefit of the right of survivorship similar to title held in joint tenancy. There may be tax benefits for holding title in this manner. On the death of an owner, the decedent's interest ends and the survivor owns the property. *For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship.*

#### **3. Joint Tenancy:**

A form of vesting title to property owned by two or more persons, who may or may not be married or registered domestic partners, in equal interests, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy estate. When a joint tenant dies, title to the property is automatically conveyed by operation of law to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will. *For example: Bruce Buyer, George Buyer, as joint tenants.*

#### **4. Tenancy in Common:**

A form of vesting title to property owned by any two or more individuals in undivided fractional interests. These fractional interests may be unequal in quantity or duration and may arise at different times. Each tenant in common owns a share of the property, is entitled to a comparable portion of the income from the property and must bear an equivalent share of expenses. Each co-tenant may sell, lease or will to his/her heir that share of the property belonging to him/her. *For example: Bruce Buyer, a single man, as to an undivided 3/4 interest and Penny Purchaser, a single woman, as to an undivided 1/4 interest, as tenants in common...*

### OTHER WAYS OF VESTING TITLE INCLUDE AS:

#### **1. A Corporation\*:**

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

#### **2. A Partnership\*:**

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

#### **3. Trustees of a Trust\*:**

A Trust is an arrangement whereby legal title to property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries.

#### **4. Limited Liability Companies (L.L.C.)\*:**

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the L.L.C. functions and is taxed. Like the corporation its existence is separate from its owners.

*\*In cases of corporate, partnership, L.L.C. or trust ownership - required documents may include corporate articles and bylaws, partnership agreements, L.L.C. operating agreements and trust agreements and/or certificates.*

#### **Remember:**

How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.

*The Title Consumer is published by the California Land Title Association. Member companies of the California Land Title Association are dedicated to facilitating the transfer of real property throughout California and increasing the public's awareness of the value and purpose of title insurance.*

Reprinted with Permission of the California Land Title Association

