



## HOW YOU TAKE TITLE

### Advantages and Limitations

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 eight of the more common examples of Sole Ownership and Co-Ownership.

### SOLE OWNERSHIP

#### 1 A Single Man/Woman

A man or woman who is not legally married. Example: John Doe, a single man.

#### 2 An Unmarried Man/Woman

A man or woman, who having been married is legally divorced or, a man or woman, having been in a registered domestic partnership that has been legally dissolved. Example: John Doe, an unmarried man.

#### 3 A Married Man/Woman or Registered Domestic Partner, As His/Her Sole And Separate Property

When a married man, woman or a registered domestic partner wishes to acquire title in



his or her name alone, the spouse/partner must consent, by quitclaim deed or otherwise, to transfer thereby relinquishing all right, title and interest in the property. Example: John Doe, a married man, as his sole and separate property; or Jane Smith, a domestic partner, as her sole and separate property.

### CO-OWNERSHIP

#### 4 Community Property

The California Civil code defines community property as property acquired by husband and wife, 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 dispose of one half of the community property. If a spouse does not exercise his/her right to dispose of one-half will go to the surviving spouse without administration. If a spouse exercises his/her right to dispose of one-half, that half is subject to administration in the estate. Example: John Doe & Mary Doe, husband and wife as community property. Example: John Doe & Mary Doe, husband and wife. Example: John Doe, a married man. Registered domestic partners shall have the same rights and protections.

#### 5 Joint Tenancy

A joint tenancy estate is defined in the Civil Code as follows: A joint interest is owned by two or more persons in equal shares, by title created by a single will or transfer, when expressly declared in the will or transfer to be 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, joint tenancy property is not subject to disposition by will. Example: John Doe and Mary Doe, husband and wife, as joint tenants; or John Doe and Jane Smith, registered domestic partners, as joint tenants

## 6 Tenancy In Common

Under tenancy in common, the co-owners own undivided interests; 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 Devisee. Example: John Doe, a single man, as to an undivided 3/4ths interest, and Jane Smith, a single woman, as to an undivided 1/4th interest, as tenants in common.

## 7 Trust

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

## 8 Community Property With Right Of Survivorship

Community Property of a husband and wife, 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. Registered domestic partners shall have the same rights and protections

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

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	TENANCY IN PARTNERSHIP	TITLE HOLDING TRUST	COMMUNITY PROPERTY RIGHT OF SURVIVORSHIP	REGISTERED DOMESTIC PARTNERS
PARTIES	Only husband and wife	Any number of persons (can be husband and wife or registered domestic partners)	Any number of persons (can be husband and wife or registered domestic partners)	Only partners (any number)	Individuals, groups of persons, or corporations, a living trust	Only husband and wife	Only partners that are registered with the California Secretary of State's Domestic Partners Registry.
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	Ownership and managerial interests are equal (except control of business is solely with managing domestic partner)
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	Title is in the "community." Each interest is separate but 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	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	Conveyance by one co-owner without the other breaks the joint tenancy	Each co-owner's interest may be conveyed separately by its owner	Any authorized partner may convey whole partnership property for partnership purposes	Designated parties within the trust agreement authorize the trustee to convey property. Also, a beneficiary's interest in the trust may be transferred	Right of survivorship may be terminated pursuant to the same procedures by which a joint tenancy may be severed	Personal property (except "necessaries") may be conveyed for valuable consideration without consent of other partner; real property requires written consent of other partner, and separate interest cannot be conveyed except upon death
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	Purchaser will become a tenant in common with the other co-owners in the property	Purchaser can only acquire whole title	A purchaser may obtain a beneficiary's 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	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 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 rights	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	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	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 survivor
SUCCESSOR'S STATUS	If passing by will, tenancy in common between devisee and survivor results	Last survivor owns property	Devisee or heirs become tenants in common	Heirs or devisee have rights in partnership interest but not specific property	Defined by the trust agreement, generally the successor becomes the beneficiary and the trust continues	Surviving spouse owns property	If passing by will, tenancy in common between devisee and survivor results
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 his/her 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 or both; whole property may be sold on execution sale to satisfy creditor	Property of community is liable for debts of either partner, which are made before or after registration as domestic partners. Whole property may be sold on execution sale to satisfy creditor
PRESUMPTION	Strong presumption that property acquired by husband and wife is community	Must be expressly stated	Favored in doubtful cases except husband and wife	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	Must be expressly stated

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# EIGHT COMMON WAYS To Hold Title