

Common ways to take title to California residential property

Advantages and Limitations

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY With Right of Survivorship
Parties	Two or more persons ¹ (may be spouses or domestic partners ²)	Two or more persons ¹ (may be spouses or domestic partners ²)	Spouses or domestic partners	Spouses or domestic partners
Division	Ownership can be divided into any number of interests, equal or unequal	Ownership interests must be equal	Ownership interests must be equal	Ownership interests must be equal
Creation	One or more conveyances (law presumes interests are equal if not otherwise specified)	Single conveyances (creating identical interests); vesting must specify joint tenancy	Presumption from marriage or domestic partnership or can be designated in deed	Single conveyance and spouses or domestic partners must indicate consent which can be on deed
Possession and control	Equal	Equal	Equal	Equal
Transferability	Each co-owner may transfer or mortgage their interest separately ³	Each co-owner may transfer his/her interest separately but tenancy in common results ^{3&4}	Both spouses or domestic partners must consent to transfer or mortgage	Both spouses or domestic partners must consent to transfer or mortgage
Liens against one owner	Unless married or domestic partners, co-owner's interest not subject to liens of other debtor/owner but forced sale can occur ⁴	Co-owner's interest not subject to liens of other debtor/owner but forced sale can occur if prior to co-owner's/debtor's death	Entire property may be subject to forced sale to satisfy debt of either spouse or domestic partner	Entire property subject to forced sale to satisfy debt of either spouse or domestic partner
Death of co-owner	Decedent's interest passes to his/her devisees or heirs by will or intestacy	Decedent's interest automatically passes to surviving joint tenant ("Right of Survivorship")	Decedent's 1/2 interest passes to surviving spouse or domestic partner unless otherwise devised by will	Decedent's 1/2 interest automatically passes to surviving spouse or domestic partner due to right of survivorship
Possible advantages/disadvantages	Co-owners interests may be separately transferable ³	Right of Survivorship (avoids probate); may have tax disadvantages for spouses	Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner ² may have tax advantage	Right of survivorship; mutual consent required for transfer; surviving spouse or domestic partner ² may have tax advantage

¹"Persons" includes a natural person as well as a validly formed corporation, limited partnership, limited liability company or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).

²For domestic partners meeting California statutory requirements, benefits are same as community property except certain tax benefits may not be available. Note: Two unrelated persons who are either (a) same sex, or (b) opposite sex if they meet age or disability requirements, may be domestic partners provided that they are not then married or in a domestic partnership and comply with other statutory requirements.

³Transfers by married persons or domestic partners may require a quitclaim deed from spouse/partner for title insurance purposes.

⁴If co-owners are married or domestic partners, property may be subject to legal presumption of "community property" requiring consent of both spouses/partners to convey or encumber title notwithstanding vesting as "joint tenancy."

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Vesting Descriptions

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

A Single Man/Woman

A single man or woman

Example: John Doe, an single man

A Divorced Man/Woman

A man or woman, having been legally divorced

Example: Jane, an unmarried woman

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

When a married man or woman wishes to acquire title as their sole and separate property, the spouse must consent and relinquish all right, title and interest in the property by deed or other written agreement

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

Co-Ownership

Community Property

Property acquired by a married couple, or either spouse during marriage, other than by gift, bequest, devise, descent or as the separate property of either, is presumed community property

Example: John and Mary, husband and wife, as community property

Example: Jane, a married woman

Tenancy in Common

Under tenancy in common, the co-owners own undivided interests, but unlike joint tenancy, 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, a single man as to an undivided 1/4th Interest as tenants in common

Community Property with Right of Survivorship

Community property acquired by a married couple when expressly declared in the transfer document to be "community property with right of survivorship," shall pass to the surviving spouse without having to first pass through the administration of the estate

Joint Tenancy

Joint and equal interest in land owned by two or more individuals created under a single instrument with right of survivorship

Example: John and Mary, husband and wife, as joint tenants

Trust

Title to real property in California may be held by a trustee in trust; the trustee of the trust holds title pursuant to the terms of the trust for the benefit of the trustor/beneficiary