

Taking Title To Real Property

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

Title to real property in California may be held by individuals, either Ownership or 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 having been married is legally divorced.

Example: Joe 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 quit claim 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.

CO-OWNERSHIP

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 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 dispose of one-half, that half is subject to administration in the estate.

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

Example: John Doe and Mary Doe, husband and wife.

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 tenants). 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.

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 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 3/4the interest, and George Smith, a single man, as to an undivided 1/4the interest; as tenants in common.

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 of the management rights and responsibilities.

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.

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 |
|--------------------|--|---|--|---|--|---|
| Parties | Only husband and wife | Any number of persons (can be husband and wife) | Any number of persons (can be husband and wife) | Only partners (any number) | Individuals, groups of persons, partnership or corporations, a living trust | Only husband and wife |
| 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 servers joint tenancy | Each co-owner has a separate legal title to his/her undivided interest | Title is in the "partnership" | Legal and equitable title is held by the trustee | 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 | Requires written consent of other spouse-or actual conveyance by deed. Separate interest is devisable by will | Conveyance by one co-owner without the others breaks the joint tenancy | Each co-owner's interest may be conveyed separately by its owner | 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 | 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 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 acquires interest that partnership owned | 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 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 | 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 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 |
| 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 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 | 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 husband and wife is community | Must be expressly stated | Favored in doubtful cases except husband and wife 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 |