

# SEVEN COMMON WAYS TO HOLD TITLE

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-Ownership. Co-Ownership of real property is where 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 are seven 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. i.e. John Doe, a single man

**2. An Unmarried Man / Woman:** A man or woman who has been married, and is legally divorced.

i.e. John Doe, an unmarried man

**3. 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.

i.e. John Doe, a married man, as his sole and separate property

## CO-OWNERSHIP

### 4. Community Property:

The California Civil Code defines community property as property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of 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 by will, to dispose of one-half of the community property, but all of it will go to the surviving spouse without a will. If a spouse exercises his or her right to dispose of one-half, that half is subject to administration in the estate.

i.e. John Doe and Mary Doe, Husband and Wife, as community property

i.e. John Doe and Mary Doe, Husband and Wife

i.e. John Doe, a married man

### 5. Community Property with Right of Survivorship: **NEW (Effective July 1, 2001)**

Community property acquired by husband and wife, 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.

### 6. 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 property immediately vests in the survivor or surviving joint tenants. As a consequence, joint tenancy property is not subject to disposition by will.

i.e. John Doe and Mary Doe, Husband and Wife, as joint tenants

### 7. 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 devisees.

i.e. John Doe, a single man, as to an undivided 3/4 this interest, and George Smith, a single man, as to an undivided 1/4 interest, as tenants in common



# CONCURRENT CO-OWNERSHIP INTERESTS

The summaries provided are a few of the more common ways to take title to real property in California. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended.

	COMMUNITY PROPERTY	COMMUNITY PROPERTY with RIGHT OF SURVIVORSHIP	JOINT TENANCY	TENANCY IN COMMON	TENANCY IN PARTNERSHIP
<b>Parties</b>	Only husband and wife.	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)
<b>Division</b>	Ownership and managerial interests are equal except control of business is solely with managing spouse.	Ownership and managerial interests are equal except control of business is solely with managing spouse.	Ownership interests must be equal.	Ownership can be divided into any number of interests equal or unequal.	Ownership interest is in relation to interest in partnership.
<b>Title</b>	Title is in the "community". Each interest is separate but management is unified.	Title is in the "community". Each interest is separate but management is unified.	There is only one title to the whole property.	Each co-owner has a separate legal title to his undivided interest.	Title is in the "partnership".
<b>Possession</b>	Both co-owners have equal management and control.	Both co-owners have equal management and control.	Equal right of possession.	Equal right of possession.	Equal right of possession but only for partnership purpose.
<b>Conveyance</b>	Personal property may be conveyed for valuable consideration without consent of other spouse; real property requires <b>written</b> consent of other spouse, and separate interest cannot be conveyed except upon death.	Conveyance by one co-owner without the other breaks the community property interest with right of survivorship.	Conveyance by one co-owner without the other breaks his joint tenancy.	Each co-owner's interest may be conveyed separately by its owner.	Any authorized partner may convey whole partnership. No partner may sell his interest in the partnership without the consent of his co-partners.
<b>Purchaser's Status</b>	Purchaser can only acquire whole title of community; cannot acquire part of it.	Purchaser can only acquire whole title of community; cannot acquire 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 the whole title.
<b>Death</b>	On co-owner's death, 1/2 belongs to survivor in severalty. 1/2 goes by will to decedent's devisees or by succession to survivor.	On co-owner's death, his interest ends and cannot be disposed of by will. Survivor owns the property by survivorship.	On co-owner's death, his interest ends and cannot be disposed of by will. Survivor owns the property by survivorship.	On co-owner's death his interest passes by will to his devisees or his heirs. No survivorship right.	On partner's death, his partnership interest passes to the surviving partner pending liquidation of the partnership. Share of deceased partner then goes to his estate.
<b>Successor's Status</b>	If passing by will, tenancy in common between devisee and survivor results.	Last survivor owns property in severalty.	Last survivor owns property in severalty.	Devisees or heirs become tenants in common.	Heirs or devisees have rights in partnership interest but not in specific property.
<b>Creditor's Rights</b>	Property of community is liable for contracts of either spouse which are made after marriage. Co-owner's interest can't be sold separately: whole property may be sold on execution to satisfy creditor.	Property of community is liable for contracts of either spouse which are made after marriage. Co-owner's interest can't be sold separately: whole property may be sold on execution to satisfy creditor.	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes tenant in common.	Co-owner's interest may be sold on execution sale to satisfy his creditor. Creditor becomes a tenant in common.	Partner's interest cannot be seized or sold separately by his personal creditor but his share of profits may be obtained by personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor.
<b>Presumption</b>	Strong presumption that property acquired by husband and wife is community.	Strong presumption that property acquired by husband and wife is community.	Must be expressly stated. Not favored.	Favored in doubtful cases except husband and wife case.	Arises only by virtue of partnership status in property placed in partnership.