

# 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 vestings in cases of ownership are:

- A SINGLE MAN/WOMAN:** A man or woman who has not been legally married. *For example: Bruce Buyer, a single man.*
- AN UNMARRIED MAN/WOMAN:** A man or woman who was previously married. *For example: Sally Seller, an unmarried woman.*
- A MARRIED MAN/WOMAN AS HIS/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 it is the desire of both spouses that title to the property be granted to one spouse as that spouse's sole and separate property.



## Co-Ownership

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

- COMMUNITY PROPERTY:** A form of vesting title to property owned by husband and wife during their marriage which they intend to own together. Community property is distinguished, from separate property which is property acquired before marriage, by separate gift or bequest, after legal separation or which is agreed to be owned by one spouse. In California, real property conveyed to a married man or woman is presumed to be community property, unless otherwise stated. Since all such property is owned equally, husband and wife must sign all agreements and documents of transfer. Under community property, either spouse has the right to dispose of one half of the community property, including transfers by will. *For example: Bruce Buyer and Barbara Buyer, husband and wife as community property.*
- JOINT TENANCY:** A form of vesting title to property owned by two or more persons, who may or may not be married, in equal interest, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same 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 and Barbara Buyer, husband and wife joint tenants.*
- 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 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.*
- COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP:** A form of vesting title to property owned by husband and wife during their marriage which they intend to own together. Right of Survivorship avoids probate. Mutual consent required for transfer. Descendent's interest automatically passes to surviving spouse due to Right of Survivorship. Surviving spouse may have tax advantage.

# Holding Title ~ Chart

## How to Take Title to Real Property

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
WHO CAN TAKE TITLE?	Any number of persons (can be husband and wife)	Any number of persons (can be husband and wife)	Only husband and wife	Only husband and wife and only when interest is created on or after July 1, 2001
HOW IS OWNERSHIP DIVIDED?	Ownership can be divided into any number of interests.	Ownership interests must be equal.	Ownership interests are equal.	Ownership interests are equal.
WHO HOLDS THE TITLE?	Each co-owner has a separate legal title to his/her undivided interest.	One title only to the whole property.	Title is in the "community." Each interest is separate but management is unified.	Title in the "community." (Similar to title being in a partnership)
WHO HAS POSSESSION?	Equal Right of Possession	Equal Right of Possession	Equal Right of Possession	Equal Right of Possession
HOW DO OWNERS CONVEY INTEREST?	Each co-owners interest may be conveyed separately by its owner	Conveyance by one co-owner without the others breaks the joint tenancy, and owners then become tenants in common.	Both co-owners must join in conveyance of real property. Separate interests cannot be conveyed.	Both co-owners must join in conveyance of real property. Separate interests cannot be conveyed.
PURCHASER'S STATUS	Purchaser becomes a tenant in common with the other co-owners.	Purchaser becomes a tenant in common with the other co-owners.	Purchaser can only acquire whole title of community.	Purchaser can only acquire whole title of community.
WHAT HAPPENS IN CASE OF DEATH?	On co-owner's death, his interest passes by will to his devisees* or heirs. No right of survivorship.	On co-owner's death, his interest ends and cannot be willed. Survivor owns the property by survivorship.	On co-owner's death, 1/2 goes to survivor in severalty. Up to half goes by will or succession to others.	On co-owner's death, decedent's interest ends and cannot be willed. Survivor owns the property by survivorship.
WHAT IS THE SUCCESSOR'S STATUS?	Devisees* or heirs become tenants in common.	Last survivor owns property in severalty.	If passing by will, tenancy in common between devisee* and survivor results	Last survivor owns property in severalty.
WHAT IS THE CREDITOR'S INTEREST?	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 his creditor. Joint tenancy is broken. Creditor becomes a tenant in common.	Co-owner's interest cannot be seized and sold separately. The whole property may be sold to satisfy debts of either husband or wife.	Co-owner's interest cannot be seized and sold separately. The whole property may be sold to satisfy debts of either husband or wife.
WHAT IS THE PRESUMPTION OF LAW?	Favored in doubtful cases except husband and wife (see community property)	Must be expressly stated and properly formed. Not favored.	Strong presumption that property acquired by husband and wife is community.	Strong presumption that property acquired by husband and wife is community.

Note: This table is intended for reference only. Clients should be advised to consult an attorney regarding the best way to hold title as personal circumstances often affect this decision. \* a devisee is a person who receives real estate from another by will.

