

# Common Methods of Holding a Title

With More Than One Person

---

## How should I take ownership of the property I am buying?

This important question is one California real property purchasers ask their real estate, escrow and title professionals every day.

Unfortunately, though these professionals may identify the many methods of owning property, they may not recommend a specific form of ownership, as doing so would constitute practicing law.

Because real property has become increasingly more valuable, the question of how parties take ownership of their property has gained greater importance. The form of ownership taken— also referred to as **the vesting of title**— will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights of the parties to the transaction. These rights involve such matters as: real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Also, how title is vested can have significant probate implications in event of death.

The California Land Title Association (CLTA) advises those purchasing real property to give careful consideration to the manner in which title will be held. **Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.**

The CLTA has provided the following definitions of common vesting as an information overview. Consumers should not rely on these as legal definitions. The Association urges real property purchasers to carefully consider their titling decision prior to closing, and to seek counsel should they be unfamiliar with the most suitable ownership choice for their particular situation.

## SOLE OWNERSHIP

Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common vesting cases of sole ownership are:

### 1. A Single Man/Woman

A man or woman who has not been legally married. *For example: Bruce Buyer, a single man.*

### 2. An Unmarried Man/Woman

A man or woman who previously married and is now legally divorced. *For example: Sally Sellers, an unmarried woman.*

### 3. 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. 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 the spouse's sole and separate property.

*For example: Bruce Buyer, a married man, as his sole and separate property.*

## CO-OWNERSHIP

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

### 1. 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.*

# Common Methods of Holding a Title

With More Than One Person

---

## 2. Community Property with Right of Survivorship:

A form of vesting title to **real property owned by husband and wife during their marriage which they intend to own together**. This form of holding title shares many of the characteristics of Community Property but adds the benefit of the right of survivorship similar to title held in joint tenancy. There may be tax benefits for holding title in this manner. Interest must be created on or after July 1, 2001.

On the death of a spouse, the decedent's interest ends and the surviving spouse owns the property by survivorship and owns the property in severalty. For example: Bruce Buyer and Barbara Buyer, husband and wife as community property with right of survivorship.

## 3. Joint Tenancy

A form of vesting title to **real property owned by two or more persons, who 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 conveyance, and the document must expressly declare the intention to create a joint tenancy estate. When a joint tenant dies, title to the property is declared the intention to create a joint tenancy property is not subject to disposition by will. *For example: Bruce Buyer and Barbara Buyer, husband and wife as joint tenants.*

## 4. Tenancy in Common:

A form of vesting title to **real property owned by any two or more individuals in undivided fractional interests**. Each person's ownership may be equal or unequal.

These fractional interest may be unequal in quantity or duration and may arise as different times.

## OTHER WAYS OF VESTING TITLE INCLUDE:

### 1. A Corporation:

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under state law as having an existence and personality separate from such shareholders.

The title company will require documents that may include Corporate Articles, Bylaws & Resolutions.

### 2. A Partnership:

A partnership is an association to or more persons who can carry on business for profit as co-workers, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

The title company will require documents that may include corporate articles, certificate of ownership and Partnership Agreement.

### 3. A Trust:

A trust is an arrangement whereby legal title to property is transferred by the grantor to a person called a trustee, be held and managed by that person for the trust agreement, called the beneficiaries.

The title company will require documents that may include Trust Agreement and Trust Certificate.

### 4. Limited Liability Companies (L.L.C.):

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The *operating agreement* will determine how the L.L.C. functions and is taxed. Like the corporation its existence is separate.

The title company will require documents that may include the L.L.C. operating agreement from its owners.

## Remember:

**How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.**

# Common Ways of Holding Title to Real Property

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
<b>Parties</b>	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.
<b>Division</b>	Ownership can be divided into any number of interests, equal or unequal.	Ownership interests cannot be divided.	Ownership interests are equal.	Ownership interests are equal.
<b>Title</b>	Each co-owner has a separate legal title to his undivided interest.	There is only one title to the whole party.	Title in the Community.” (Similar to title being in a partnership)	Title in the “Community.” (Similar to title being in a partnership)
<b>Possession</b>	Equal right of possession.	Equal right of possession.	Equal right of possession.	Equal right of possession.
<b>Conveyance</b>	Each co-owner’s interest may be conveyed separately by its owner.	Conveyance by one co-owner without the others breaks the joint tenancy.	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.
<b>Purchaser’s Status</b>	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. Cannot acquire a part of it.	Purchaser can only acquire whole title of community. Cannot acquire a part of it.
<b>Death</b>	On co-owner’s death, his interest passes by will to his devisees or heirs. No survivorship right.	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 1/2 goes by will or succession to others. (Consult attorney with specific questions).	On co-owner’s death, decedent’s interest ends and cannot be willed. Survivor owns the property by survivorship.
<b>Successor’s Status</b>	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.
<b>Creditor’s Rights</b>	Co-owner’s interest may be sold on execution sale to satisfy his creditor. Creditor becomes a tenant in common.	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 cannot be seized and sold separately. The whole property may be sold to satisfy debts of either husband or wife depending on the debt. (Consult attorney with specific questions).	Co-owner’s interest cannot be seized and sold separately. The whole property may be sold to satisfy debts of either husband or wife depending on the debt. (Consult attorney with specific questions).
<b>Presumption</b>	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.

THIS IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. SPECIFIC QUESTIONS FOR ACTUAL REAL PROPERTY TRANSACTIONS SHOULD BE DIRECTED TO YOUR ATTORNEY OR C.P.A.