

# Vesting

## 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 <sup>1</sup> (may be spouses or domestic partners <sup>2</sup> )   | Two or more persons <sup>1</sup> (may be spouses or domestic partners <sup>2</sup> )   | 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 <sup>3</sup>  | Each co-owner may transfer his/her interest separately but tenancy in common results <sup>3&amp;4</sup>                        | 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 <sup>4</sup> | 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 <sup>3</sup>  | Right of Survivorship (avoids probate); may have tax disadvantages for spouses   | Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner <sup>2</sup> may have tax advantage | Right of survivorship; mutual consent required for transfer; surviving spouse or domestic partner <sup>2</sup> 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).  
 2. For 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.  
 3. Transfers by married persons or domestic partners may require a quitclaim deed from spouse/partner for title insurance purposes.  
 4. If 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."

## 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



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