

First American Title Company

Common Ways To Take Title To California Residential Real Property



	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
Parties	Two or more persons (1) (may be husband and wife).	Two or more persons (may be husband and wife).	Husband and wife only.	Husband and wife only.
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 conveyance (creating identical interests). Vesting must specify joint tenancy or law presumes tenancy in common.	Single conveyance or presumption from marriage.	Single conveyance and parties must indicate consent which can be indicated on deed.
Possession and Control	Equal.	Equal.	Equal.	Equal.
Transferability (2)	Each co-owner may transfer or mortgage their respective interest separately.	Each co-owner may transfer their interest separately but tenancy in common results (3).	Both spouses must consent to transfer or mortgage.	Both spouses must consent to transfer or mortgage.
Liens against One Owner	Co-owner's interest not subject to liens of other debtor/ owner but forced sale can occur.	Co-owner interest not subject to liens of other debtor/ owner but forced sale can occur if prior to the debtor's death.	Entire property subject to forced sale to satisfy debt of either spouse.	Entire property subject to forced sale to satisfy debt of either spouse.
Death of Co-Owner	Decedent's interest passes to his/ her heirs by will or intestate.	Decedent's interest automatically passes to surviving joint tenant (" Right of Survivorship").	Deceased's interest passes to spouse, except 1/2 of said interest may pass to devisee by decedent's will.	Decedent's interest automatically passes to surviving spouse due to Right of Survivorship.
Possible advantages/ disadvantages	Co-owner interests are separately transferable.	Right of Survivorship (avoids probate).	Qualified survivorship rights. Mutual consent required for transfer. Surviving spouse may have tax advantage.	Right of Survivorship (avoids probate). Mutual consent required for transfer. Surviving spouse may have tax advantage.

1. The term "persons" includes a natural person as well as a validity formed corporation, limited partnership, limited liability company, or general partnership. Trust property is vested in the trustee (normally a natural person or corporation).

2. Transfers by married persons may require a quitclaim deed from spouse for title insurance purposes.

3. If co-owners are married, property may be subject to legal presumption of community property - requiring consent of both spouses to convey or encumber title - despite vesting as "joint tenancy."

THE FOREGOING IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

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