

COMMON WAYS TO HOLD TITLE

HOW YOU TAKE TITLE - ADVANTAGES AND LIMITATIONS:

Title to real property 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 seven of the more common examples of Sole Ownership and Co-Ownership.

SOLE OWNERSHIP

- A man or woman who is not married. Example: John Doe, a single man.
- An Unmarried Man/Woman:
A man or woman, who having been married, is legally divorced.
Example: John Doe, an unmarried man.
- A Married Man/Woman, as His/Her Sole and 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 Doe, a married man, as his sole and separate property.

CO-OWNERSHIP

- Community Property:
Property acquired by husband and wife, or either during marriage, other than by gift, bequest, devise, descent or as the separate property of either is presumed community property.
Example: John Doe and Mary Doe, husband and wife, as community property.
Example: John Doe and Mary Doe, husband and wife.
Example: John Doe, a married man
- Joint Tenancy:
Joint and equal interests in land owned by two or more individuals created under a single instrument with right of survivorship.
Example: John Doe and Mary Doe, husband and wife, as joint tenants.
- 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 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 devisee.
Example: John Doe, a single man, as to an undivided $\frac{3}{4}$ ths interest, and George Smith, a single man as to an undivided $\frac{1}{4}$ th interest, as tenants in common.
- Trust:
Title to real property may be held in trust. The trustee of the trust holds title pursuant to the terms of the trust for the benefit of the trustor/beneficiary.

The preceding summaries are a few of the more common ways to take title to real property and are provided for informational purposes only.

There are significant tax and legal consequences on how you hold title. We strongly suggest contacting an attorney and/or CPA for specific advice on how you should actually vest your title.

CONCURRENT CO_OWNERSHIP INTERESTS

The comparison below is provided for information only, it should not be used to determine how you hold title. We highly recommend that you seek professional counsel from an attorney and/or CPA to determine the legal and tax consequences of how title is vested.

| | COMMUNITY PROPERTY | JOINT TENANCY | TENANCY IN COMMON | TENANCY IN PARTNERSHIP | TITLE HOLDING TRUST |
|-------------------|---|--|--|---|---|
| PARTIES | 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) | Individuals, groups of persons, partnerships or corporations, a living trust |
| DIVISION | 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 | Ownership is a personal property interest and can be divided into any number of interests |
| TITLE | Title is in the "community." Each interest is separate but management is unified | Sale by joint tenant severs joint tenancy | Each co-owner has a separate legal title to his/her undivided interest | Title is in the "partnership" | Legal and equitable title is held by the trustee |
| POSSESSION | Both co-owners have equal management and control | Equal right of possession | Equal right of possession | Equal right of possession, but only for partnership purposes | Right of possession as specified in the trust provisions |
| CONVEYANCE | Personal property (except "necessaries") may be conveyed for valuable consideration without consent of other spouse; real property requires written consent of other spouse, and separate interest cannot be conveyed except upon death | Conveyance by one co-owner without the others breaks the joint tenancy | Each co-owner's interest may be conveyed separately by its owner | Any authorized partner may convey whole partnership property for partnership purposes | Designated parties within the trust agreement authorize the trustee to convey property. Also, a beneficiary's interest in the trust may be transferred. |

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|---------------------------|---|---|--|---|--|
| PURCHASER'S STATUS | Purchaser can only acquire whole title of community; cannot acquire a 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 | A purchaser may obtain a beneficiaries interest by assignment or may obtain legal and equitable title from the trust |
| DEATH | On co-owner's death, 1/2 belongs to survivor in severalty. 1/2 goes by will to descendants devisee or by succession to survivor | On co-owner's death his/her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship | On co-owner's death his/her interest passes by will to devisee or heirs. No survivorship rights. | On partner's death, his/her partnership interest passes to the surviving partner pending liquidation of the partnership. Share of deceased partner then goes to his/her estate | Successor beneficiaries may be named in the trust agreement, eliminating the need for probate. |
| SUCCESSOR'S STATUS | If passing by will, tenancy in common between devisee and survivor results. | Last survivor owns property | Devisee or heirs become tenants in common | Heirs or devisee have rights in partnership interest but not specific property | Defined by the trust agreement, generally the successor becomes the beneficiary and the trust continues |
| CREDITOR'S RIGHTS | Property of community is liable for debts of either spouse, which are made before or after marriage. Whole property may be sold on execution sale to satisfy creditor | Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken. Creditor becomes a tenant in common | Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Creditor becomes a tenant in common | Partner's interest cannot be seized or sold separately by his/her personal creditor but his/her share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor | Creditor may seek an order for execution sale of the beneficial interest or may seek an order that the trust estate be liquidated and the proceeds distributed |
| PRESUMPTION | Strong presumption that property acquired by husband and wife is community | Must be expressly stated | Favored in doubtful cases except husband and wife case | Arise only by virtue of partnership status in property placed in partnership | A trust is expressly created by an executed trust agreement |