

# Vesting Ways to Hold Title

|   | TENANCY IN COMMON   | JOINT TENANCY  | COMMUNITY PROPERTY  | COMMUNITY PROPERTY with Right of Survivorship  |
|---|---|--|---|--|
| <b>Parties</b>                            | Two or more persons <sup>1</sup>  | Two or more natural persons  | Spouses or domestic partners <sup>2</sup>   | Spouses or domestic partners <sup>2</sup>  |
| <b>Division</b>                           | 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  |
| <b>Creation</b>                           | 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                            |
| <b>Possession and Control</b>             | Equal   | Equal  | Equal   | Equal  |
| <b>Transferability</b>                    | Each co-owner may transfer or mortgage their interest separately  | Each co-owner may transfer his/her interest separately but tenancy in common results   | Both spouses or domestic partners must consent to transfer or mortgage  | Both spouses or domestic partners must consent to transfer or mortgage   |
| <b>Liens Against One Owner</b>            | Unless married or domestic partners, co-owner's interest not subject to liens of other debtor/owner but forced sale can occur | 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                              |
| <b>Death of Co-Owner</b>                  | 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        |
| <b>Possible Advantages/ Disadvantages</b> | Co-owners interests may be separately transferrable <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 may have tax advantage <sup>2</sup> | Right of survivorship; mutual consent required for transfer; surviving spouse or domestic partner may have tax advantage |

1. "Persons includes a natural person as well as validly formed cooperation, limited partnership, limited liability company or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).

2. Transfers by spouses/domestic partners may require a quitclaim deed from the other spouse/partner for title insurance purposes.

3. If co-Owners are spouses/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"

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# 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 some of the most common examples of each as providing by the California Land Title Association.

## 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 or woman, an unmarried man or woman or a widow or widower:

A man or woman who is not legally married or in a domestic partnership.

*For example:* Bruce Buyer, a single man.

### 2. A Married Man or Woman as His or 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 both spouses want title to the property to be granted to one spouse as that spouse's sole and separate property. The same rules will apply for same sex married couples.

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

### 3. A Domestic Partner as His or Her Sole and Separate Property:

A domestic partner who wishes to acquire title in his or her name alone. The title company insuring title will require the domestic partner of the person acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both domestic partners want title to the property to be granted to one partner as that person's sole and separate property.

*For example:* Bruce Buyer, a registered domestic partner, 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 together by married persons or by domestic partners. Community property is distinguished from separate property, which is property acquired before marriage or before a domestic partnership by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse or domestic partner.

In California, real property conveyed to a married person, or to a domestic partner is presumed to be community property, unless otherwise stated (i.e. property acquired as separate property by gift, bequest or agreement). Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property by will.

*For example:* Bruce Buyer and Barbara Buyer, husband and wife, as community property, or Sally Smith and Jane Smith, registered domestic partners as community property. Another example for same sex couples: Sally Smith and Jane Smith, spouses, as community property.

### 2. Community Property with Right of Survivorship:

A form of vesting title to property owned together by spouses or by domestic partners. 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. On the death of an owner, the decedent's interest ends and the survivor owns all interests in the property.

*For example:* Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, spouses, as community property with right of survivorship. Another example for same sex couples: Sally Smith and Jane Smith, registered domestic partners, as community property with right of survivorship.

## Co-Ownership Continued

### 3. Joint Tenancy:

A form of vesting title to property owned by two or more persons, who may or may not be married or domestic partners, in equal interests, 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 automatically 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, a married man and George Buyer, a single man, as joint tenants.

**Note:** If a married person enters into a joint tenancy that does not include their spouse, the title company insuring title may require the spouse of the married man or woman acquiring title to specifically consent to the joint tenancy. The same rules will apply for same sex married couples and domestic partners.

### 4. 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 the 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  $\frac{3}{4}$  interest and Penny Purchaser, a single woman, as to an undivided  $\frac{1}{4}$  interest.

## Other ways of vesting title include:

### 1. Trustees of a Trust:

A Trust is an arrangement whereby legal title to property is transferred by a grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries. A trust is generally not an entity that can hold title in its own name. Instead title is often vested in the trustee of the trust. For example: Bruce Buyer trustee of the Buyer Family Trust.



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