

## **How You Take Title**

*Information from Chicago Title*

### Advantages and Limitations

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 eighth of the more common examples of Sole Ownership and Co-Ownership.

### Sole Ownership

#### 1) A Single Man/Woman

A man or woman who is not legally married. Example: John Doe, a single man.

#### 2) An Unmarried Man/Woman

A man or woman, who having been married is legally divorced. Example: Joe Doe, and unmarried man.

#### 3) A Married Man/Woman, As His/Her Sole And Separate Property

When a married man or woman wishes to acquire title in his or her name alone, the spouse must consent, by quitclaim deed or otherwise, to transfer thereby relinquishing all right, title and interest in the property. Example: John Doe, a married man, as his sole and separate property.

### Co-Ownership

#### 4) Community Property

The California Civil Code defines community property acquired by husband and wife, or by either. Real property conveyed to a married man or woman is presumed to be community property, unless otherwise stated. Under community property, both spouses have the right to dispose of one half of the community property. If a spouse does not exercise his/her right to dispose of one-half to someone other than his/her spouse, then the one-half will go to the surviving spouse without administration. If a spouse exercises his/her right to dispose of one-half, that half is subject to administration in the estate. Example: John Doe & Mary Doe, husband and wife, as community property. Example: John Doe & Mary Doe, husband and wife. Example John Doe, married man.

#### 5) Joint Tenancy

A joint tenancy estate is defined in the Civil Code as follows: "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer, when expressly declared in the will or transfer to be a joint tenancy." A chief characteristic of joint tenancy property is the right of survivorship. When a joint tenant dies, title to the property immediately vests in the surviving joint tenant(s). As a consequence, joint tenancy property is not subject to disposition by will. Example: John Doe and Mary Doe, husband and wife, as joint tenants.

#### 6) 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 or duration, 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 devisees. Example: John Doe, a single man, as to an undivided 3/4ths interest, and George Smith, a single man, as to an undivided 1/4<sup>th</sup> interest, as tenants in common.

#### 7) Trust

Title to real property in California may be held in a title holding trust. The trust holds legal and equitable title to the real estate. The trustee holds title for the trustor/beneficiary who retains all of the management rights and responsibilities.

#### 8) Community Property With Right Of Survivorship

Community Property of a husband and wife, when expressly declared in the transfer document to be community property with the right of survivorship, and which maybe accepted in writing on the face of the document by a statement signed or initialed by the grantees, shall upon the death of one of the spouses, pass to the survivor, without administration, subject to the same procedures as property held in joint tenancy.

The preceding summaries are a few of the more common ways to take title to real property in California and are provided for informational purposes only. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended. 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.

|                           | <b>Community Property</b>  | <b>Joint Tenancy</b>   | <b>Tenancy In Common</b>  | <b>Tenancy In Partnership</b>  | <b>Title Holding Trust</b>  | <b>Community Property of Survivorship</b>  |
|---------------------------|--|--|---|--|---|--|
| <b>Parties</b>            | Only Husband & Wife  | Any number of persons (can be husband & wife)  | Any number of person (can be husband & wife)  | Only partners (any number)   | Individuals, groups of persons, Partnerships or corporations, Living trust  | Only husband and wife  |
| <b>Division</b>           | Ownership & managerial Interests are equal (except Control of business is solely with Managing spouse)   | Ownership interest 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   | Ownership and Managerial interests are equal   |
| <b>Title</b>              | Title is in the "community". each interest is separate but management is unified   | Sale or encumbrance by joint tenant severs joint tenancy   | Each co-owner has as separate legal title to his/her undivided interest                         | Title is in the "partnership"  | Legal and equitable title is held by the trustee  | Title is in the "community" management is unified  |
| <b>Possession</b>         | 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  | Both co-owners have equal management and control   |
| <b>Conveyance</b>         | Personal property (except "necessaries") may be conveyed for valuable consideration without 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 | Right of Survivorship may be terminated pursuant to the same Procedures by which a joint tenancy may be severed  |
| <b>Purchaser's Status</b> | Purchaser can only acquire whole title of community; cannot acquire a part of it   | Purchaser will become a tenant in common with 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 beneficial interest by assignment or may obtain legal and equitable title from the trust                                     | Purchaser can only acquire whole title of community; cannot acquire a part of it   |
| <b>Death</b>              | On co-owner's death, 1/2 belongs to survivor in severalty. 1/2 goes by will to descendant's 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  | Upon death of a spouse, his/her interest passes to the surviving spouse, without administration, subject to the same procedures as property held in joint tenancy. |
| <b>Successor's Status</b> | If passing by will, tenancy in common between devisee or by succession to survivor   | 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 trust continues   | Surviving spouse owns property   |
| <b>Creditor's Rights</b>  | Property of community is liable for debts of either spouse which are made before or after  | Co-owner's interest may be sold on execution sale to   | Co-owner's interest may be sold on execution sale to  | Partner's interest cannot be seized or sold separately by his/her  | Creditor may seek an order for execution sale of the beneficial interest or may   | Property of community is liable for debts of   |

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|--------------------|--|--|---|---|---|--|
|                    | marriage. Whole property may be sold on execution sale to satisfy creditor | satisfy creditor. Joint tenancy is broken, creditor becomes a tenant in common | satisfy his/her creditor. Creditor becomes a tenant in common | personal creditor, but his/her share of points may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor | seek an order that the trust estate be liquidated and the proceeds distributed. | either which are made before or after marriage; whole property may be sold on execution sale to satisfy creditor |
| <b>Presumption</b> | Strong presumption that property acquired by husband & wife is community   | Must be expressly stated   | Favored in doubtful cases except husband and wife cases       | Arises only by virtue of partnership status in property placed in partnership   | A trust is expressly created by an executed trust agreement                     | Must be expressly stated.  |