

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 ¹	Two or more natural persons	Spouses or domestic partners ²	Spouses or domestic partners ²
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	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
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	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 ³	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 ²	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"

