

Vesting – Three Common Ways To Hold Title (California)

Before you reach the closing day, you have to make a decision as to how you will “hold title” to the property. This decision has legal, tax and estate planning ramifications. Therefore, it is prudent to consult an attorney or certified public accountant (CPA). Some lenders or states restrict how the borrower is allowed to hold title.

	Tenancy in Common	Joint Tenancy	Community Property
Parties	Any number of persons (can be husband and wife).	Any number of persons (can be husband and wife).	Only husband and wife.
Division	Ownership can be divided into any number of interests, equal or unequal.	Owner interests must be equal.	Ownership and managerial interests are equal except control of business is solely with managing spouse.
Title	Each co-owner has a separate legal title to his or her undivided interest.	There is only one title to the whole property.	Title is in the “community.” Each interest is separate but management is unified.
Possession	Equal rights of possession.	Equal rights of possession.	Both co-owners have equal management and control.
Conveyance	Each co-owner interest may be conveyed separately by its individual owner.	Conveyance by one co-owner without the others will break that individual’s joint tenancy.	Personal property (except “necessaries”) may be conveyed for valuable consideration without the consent of the other spouse; real property requires written consent of other spouse and separate interest cannot be conveyed except upon death.
Purchaser’s Status	Purchaser will become a tenant in common with the other property co-owners.	Purchaser will become a tenant in common with the other property co-owners.	Purchaser can only acquire whole title of community; cannot acquire part of it.
Death	Upon co-owner’s death, his or her interest passes by will to that person’s devisees or heirs. No survivorship right.	Upon co-owner’s death, his or her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship.	Upon co-owner’s death, 50% belongs to survivor in severalty, 50% goes by will to descendant devisees or by succession to survivor.
Successor’s Status	Devisees or heirs become tenants in common.	Last survivor owns property in severalty.	If passing by will, tenancy in common between devisees and survivor will results.
Creditor’s Rights	Co-owner’s interest may be sold on execution sale to satisfy his or her creditor. The creditor becomes a tenant in common.	Co-owner’s interest may be sold on execution sale to satisfy his or her creditor. Joint tenancy is broken; creditor becomes tenant in common.	Property of community is liable for contracts of either spouse which were made after marriage, and prior to or after Jan. 1,1975. Co-owner’s interest cannot be sold separately; whole property may be sold on execution to satisfy creditor.
Presumption	Favored in doubtful cases except in husband and wife cases.	Must be expressly stated. Not favored.	The presumption is very strong that property which has been acquired by husband and wife is community property.