

Common Ways to Take Title to California Residential Real Property

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY WITH RIGHTS OF SURVIVORSHIP
Parties	Two or more persons ¹ (may be spouses or domestic partners ²).	Two or more persons ¹ (may be spouses or domestic partners ²).	Husband and wife or domestic partners.	Husband and wife or domestic partners.
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 conveyance (creating identical interests). Vesting must specify joint tenancy.	Single conveyance or presumption from marriage or domestic partnership.	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. ³	Each co-owner may transfer his/her interest separately but tenancy in common results. ^{3&4}	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. ⁴	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 debt.	Entire property 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 heirs by will or intestacy.	Decedent's interest automatically passes to surviving joint tenant (Right of Survivorship).	Deceased's 1/2 interest passes to surviving spouse or domestic partner unless otherwise devised by will.	Deceased's 1/2 interest automatically passes to surviving spouse or domestic partner due to Right of Survivorship.
Possible Advantages/Disadvantages	Co-owner 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 ² may have tax advantage.	Right of Survivorship. Mutual consent required for transfer. Surviving spouse or domestic partner ² may have tax advantage.

1. "Persons" includes a natural person as well as a validly formed corporation, limited partnership, limited liability company or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).
2. For domestic partners meeting California statutory requirements, benefits are same as community property except certain tax benefits may not be available. Note: Two unrelated persons who are either (a) same sex, or (b) opposite sex if they meet age or disability requirements, may be domestic partners provided that they are not then married or in a domestic partnership and comply with other statutory requirements.
3. Transfers by married persons or domestic partners may require a quitclaim deed form spouse/partner for title insurance purposes.
4. If co-owners are married or 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".

THE FOREGOING IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

Revised as of January 1, 2005 to include California registered domestic partnership law.²



**First American
Title Company**