

# COMMON FORMS OF RESIDENTIAL OWNERSHIP



## How to Take Title to Real Property

|                    | TENANCY IN COMMON   | JOINT TENANCY   | COMMUNITY PROPERTY   | COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP  |
|--------------------|---|---|--|--|
| PARTIES INVOLVED   | Any number of persons (can be spouses)  | Any number of persons (can be spouses)  | Only spouses or registered domestic partners   | Only spouses or registered domestic partners   |
| DIVISION           | Ownership can be divided into any number of interests, equal or unequal   | Ownership interests are equal   | Ownership interests are equal  | Ownership interests are equal  |
| 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 in the "Community" (similar to title being in a partnership)   | Title in the "Community" (similar to title being in a partnership)   |
| POSSESSION         | Equal right of possession   | Equal right of possession   | Equal right of possession  | Equal right of possession  |
| CONVEYANCE         | Each co-owner's interest may be conveyed separately by its owner  | Conveyance by one co-owner severs the joint tenancy   | Both co-owners must join in conveyance of real property – separate interests cannot be conveyed  | Both co-owners must join in conveyance of real property – separate interests cannot be conveyed  |
| PURCHASER'S STATUS | Purchaser of an undivided interest becomes a tenant in common with the other co-owners                          | Purchaser of an undivided interest becomes a tenant in common with the other co-owners  | Purchaser can only acquire whole title of community – cannot acquire a part of it  | Purchaser can only acquire whole title of community – cannot acquire a part of it  |
| UPON DEATH         | Upon co-owner's death, his or her interest passes by will to devisees, or to heirs by intestate succession      | Upon co-owner's death, his or her interest passes automatically to the survivor(s)  | Upon co-owner's death, decedent's half passes automatically to surviving spouse unless willed to another party (Consult attorney with specific questions)                                | Last survivor owns property individually   |
| SUCCESSOR'S STATUS | Portion passing by will results in tenancy in common between devisee and survivor                               | Last survivor owns property individually  | Portion passing by will results in tenancy in common between devisee and survivor  | Last survivor owns property individually   |
| CREDITOR'S RIGHTS  | Co-owner's interest may be sold on execution sale to satisfy his creditor – creditor becomes a tenant in common | Co-owner's interest may be sold by execution sale to satisfy a judgment lien. Joint tenancy is severed, and creditor becomes tenant in common with other co-owner | Co-owner's interest cannot be seized and sold separately (whole property may be sold to satisfy debts of either spouse depending on the debt – consult attorney with specific questions) | Co-owner's interest cannot be seized and sold separately (whole property may be sold to satisfy debts of either spouse depending on the debt – consult attorney with specific questions) |
| PRESUMPTION        | When vesting (form of ownership) is not specified, tenancy in common is presumed by law                         | Must be expressly stated and properly formed  | Rebuttable presumption that any property acquired by spouses is community property (Consult attorney with specific questions). Must be specified on deed for title insurance purposes    | Rebuttable presumption that any property acquired by spouses is community property (Consult attorney with specific questions). Must be specified on deed for title insurance purposes    |