

SOLE OWNERSHIP VS. CO-OWNERSHIP



Title to real property in California may be held by individuals either in Sole Ownership or in Co-Ownership. Co-Ownership of real property is title held by two or more persons. There are several variations on how title may be held in each type of ownership. The following are brief summaries of the more common examples of sole ownership and co-ownership.

Sole Ownership

1. A single man/woman:

A man or woman who is neither legally married, nor a Registered Domestic Partner. (e.g. John Doe, a single man)

2. An unmarried man/woman:

A man or woman who is legally divorced. (e.g. John Doe, an unmarried man)

3. A married man/married woman/Registered Domestic Partner as his/her separate property:

When a married man, married woman or Registered Domestic Partner wishes to acquire title in his/her name alone, the spouse or other Registered Domestic Partner must consent by quitclaim deed or other recordable written instrument. The spouse or other Registered Domestic Partner thereby relinquishes his/her community interest in the property. (e.g. John Doe, a married man, as his sole and separate property)

Co-Ownership

4. The California Family Code defines community property as a property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

On January 1, 2005 most of the community property rules became applicable to Registered Domestic Partners. Real property conveyed to a married man, married woman or Registered Domestic Partner will be presumed to be community property unless otherwise. Under community property rules both spouses or both Registered Domestic Partners have the right to dispose of one half of the community property by will. If one of the spouses or one of the Registered Domestic Partners dies without a will the deceased's interest may pass to the survivor without the need for administration in Probate. If one spouse or Registered Domestic Partner exercises his/her right to dispose of his/her one half of the community property that interest will be subject to administration by a Probate Court. (e.g. John Doe and Mary Doe, Husband and Wife)

5. Joint Tenancy

A Joint Tenancy is defined in the California Civil Code as: "(a) [a] joint interest is 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 to be a joint tenancy..." The chief characteristic of Joint Tenancy property is the right of survivorship. When one joint tenant dies the title to the property immediately vests in the surviving joint tenant(s). Joint Tenancy property is not subject to disposition by will. (e.g. 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 which need not be equal in size. There is no right of survivorship, thus upon death of a tenant in common the interest vests in the heirs or devisees of the deceased. (e.g. John Doe, a single man, as to an undivided $\frac{3}{4}$ interest, and George Smith, a single man, as to an undivided $\frac{1}{4}$ interest, as tenants in common.)

7. Community Property with Rights of Survivorship (effective July 1, 2001)

Spouses may add the right of survivorship aspect of joint tenancy to community property. Registered Domestic Partners may take advantage of this mechanism as well. Upon death of a spouse or Registered Domestic Partner the title will pass to the survivor automatically. Specific language in the deed is required. (e.g. John Doe and Mary Doe, Husband and Wife, as community property with the right of survivorship.)

