

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 & 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".
 THIS IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING GUIDANCE, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

Vesting Descriptions

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-ownership. Co-ownership of real property occurs when title is held by two or more persons. There are several variations as to how title may be held in each type of ownership. The following brief summaries reference some of the most common examples of each as providing by the California Land Title Association.

▼ **Sole Ownership** Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common vesting cases of sole ownership are:

- 1. A Single Man or Woman, an Unmarried Man or Woman or a Widow or Widower:**
A man or woman who is not legally married or in a domestic partnership
For example: Bruce Buyer, a single man.
- 2. A Married Man or Woman as His or Her Sole and Separate Property:**
A married man or woman who wishes to acquire title in his or her name alone. The title company insuring title will require the spouse of the married man or woman acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both spouses want title to the property to be granted to one spouse as that spouse's sole and separate property. The same rules will apply for same sex married couples. For example: Bruce Buyer, a married man, as his sole and separate property.
- 3. A Domestic Partner as His or Her Sole and Separate Property:**
A domestic partner who wishes to acquire title in his or her name alone. The title company insuring title will require the domestic partner of the person acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both domestic partners want title to the property to be granted to one partner as that person's sole and separate property. For example: Bruce Buyer, a registered domestic partner, as his sole and separate property.

▼ **Co-Ownership** Title to property owned by two or more persons may be vested in the following forms:

- 1. Community Property:**
A form of vesting title to property owned together by married persons or by domestic partners. Community property is distinguished from separate property, which is property acquired before marriage or before a domestic partnership by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse or domestic partner. In California, real property conveyed to a married person, or to a domestic partner is presumed to be community property, unless otherwise stated (i.e. property acquired as separate property by gift, bequest or agreement). Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property by will. For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property, or Sally Smith and Jane Smith, registered domestic partners as community property. Another example for same sex couples: Sally Smith and Jane Smith, spouses, as community property.

- 2. Community Property with Right of Survivorship:**
A form of vesting title to property owned together by spouses or by domestic partners. This form of holding title shares many of the characteristics of community property but adds the benefit of the right of survivorship similar to title held in joint tenancy. There may be tax benefits for holding title in this manner. On the death of an owner, the decedent's interest ends and the survivor owns all interests in the property. For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, spouses, as community property with right of survivorship. Another example for same sex couples: Sally Smith and Jane Smith, registered domestic partners, as community property with right of survivorship.

- 3. Joint Tenancy:**
A form of vesting title to property owned by two or more persons, who may or may not be married or domestic partners, in equal interests, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy estate. When a joint tenant dies, title to the property is automatically conveyed by operation of law to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will. For example: Bruce Buyer, a married man and George Buyer, a single man, as joint tenants.
Note: If a married person enters into a joint tenancy that does not include their spouse, the title company insuring title may require the spouse of the married man or woman acquiring title to specifically consent to the joint tenancy. The same rules will apply for same sex married couples and domestic partners.

- 4. Tenancy in Common:**
A form of vesting title to property owned by any two or more individuals in undivided fractional interests. These fractional interests may be unequal in quantity or duration and may arise at different times. Each tenant in common owns a share of the property is entitled to a comparable portion of the income from the property and must bear an equivalent share of expenses. Each co-tenant may sell, lease or will to his/her heir that share of the property belonging to him/her. For example: Bruce Buyer, a single man, as to an undivided 3/4 interest and Penny Purchaser, a single woman, as to an undivided 1/4 interest.

Other ways of vesting title include:

- 1. Trustees of a Trust:**
A Trust is an arrangement whereby legal title to property is transferred by a grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries. A trust is generally not an entity that can hold title in its own name. Instead title is often vested in the trustee of the trust. For example: Bruce Buyer trustee of the Buyer Family Trust.



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	共有 ("TENANCY IN COMMON")	聯名擁有 ("JOINT TENANCY")	聯合財產 ("COMMUNITY PROPERTY")	自動轉移聯合財產 ("COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP")
當事人	兩人或更多人 ¹	兩個或兩個以上的自然人	配偶或同居伴侶	配偶或同居伴侶
劃分	所有權可分割為任意數量的利益，均等或不均等皆可	所有權必須均等	所有權必須均等	所有權必須均等
建立	一筆或多筆轉讓（若無特別註明，利益依法均等）	單一轉讓（建立相同利益）； 歸屬必須指定聯名擁有	推定的婚姻或同居關係， 也可以依契約指派	單一轉讓和配偶或同居伴侶，必須 在契約中標示哪一個可以被推定
持有與控制	均等	均等	均等	均等
可轉讓性	每一位共有人可個別轉讓或抵押其利益 ²	每一位共有人可個別轉讓其利益， 但共有會導致 ³ 和 ⁴	配偶或同居伴侶必須同時同意轉讓 或抵押	配偶或同居伴侶必須同時同意轉讓 或抵押
擁有人的抵押權	每一位共有人可個別轉讓或抵押其利益 ²	每一位共有人可個別轉讓其利益， 但共有會導致 ³ 和 ⁴	整個產權可能被拍賣， 以滿足配偶或同居伴侶的債權	整個產權可能被拍賣， 以滿足配偶或同居伴侶的債權
共有人死亡	死者的利益透過遺囑或無遺囑轉 移給死者的受贈人或繼承人	死者的利益自動轉移給尚存的聯合 持有人 （「聯合財產權」）	死者的二分之一利益轉移給未亡配 偶或同居伴侶，除非依遺囑遺贈	依聯合財產權，死者的二分之一利 益自動轉移給未亡配偶或同居伴侶
可能的利弊	共有人利益可個別轉讓 ²	聯合財產權 （避免遺囑認證）； 配偶可能有納稅缺點	合格的生存權；需雙方同意轉移； 未亡配偶或同居伴侶 ² 可能有納稅 利益	生存權；需雙方同意轉移；未亡配 偶或同居伴侶 ² 可能有納稅利益

1. 「人」包括自然人、合法成立的公司、有限合夥企業、有限責任公司或信託公司。但財產歸屬於受託人（通常並非本人或法人）。
2. 為了保障產權保險，由已婚者或同居伴侶轉讓可能需受配偶/伴侶的高權轉讓同意。
3. 如果共有未結核或無伴侶，產權可能會受到「共有財產」的法律推定，要求配偶/伴侶雙方同意轉讓或抵押產權，不論是否歸屬為「聯名擁有」。

此項資訊僅供一般參考。對於特定的問題或有關財務、稅務或遺產規劃的指南，我們建議您聯絡律師或合法的會計師。

歸屬描述

位於加州的房產產權可以由個人持有，方式包括全權擁有和共同擁有。房產的共同擁有權出現於產權為兩個或以上的個人共同持有時。產權可能的不同持有方式會產生幾種變動。下列簡要總結了有關全權擁有和共同擁有的八個較為常見的例子。加州土地產權協會結集一些最常見的例子提供以下簡要資料以供參考。

▼ 獨資 - 獨資的產權所有權乃為個人或其他可取得所有權的組織或公司所有。獨資所有權歸屬案件的常例為：

- 單身男性或女性，未婚男性或女性，寡婦或寡夫：**
未合法結婚之男人或女人，或未具有家庭的合夥伴侶關係。
例如：布魯斯，買方，一個單身男人。
- 已婚之男人或女人，具有屬於他/她個人的獨立房地產：**
一個已婚的男人或女人，希望房地產的所有權狀上只具有他/她個人的名字，產權保險公司將會要求此已婚男人或女人之配偶給以特別聲明放棄或她對該房地產所擁有的所有權，和所有相關的权利和利益。此項聲明確夫妻雙方同意將房地產所有權歸屬配偶之一方使之成為獨立產權。同樣規則也適用於同性婚姻的夫婦。
例如：布魯斯，買方，一個已婚男人，是他房地產的唯一和獨立的產權人。
- 家庭的合夥伴侶，是他/她房地產的唯一和獨立的產權所有人：**
家庭的合夥伴侶，希望房地產的所有權狀上只具有他/她個人的名字。產權保險公司將會要求此已婚男人或女人之配偶特別聲明放棄他或她對該房地產所擁有的所有權，和所有相關的权利和利益。此項聲明確夫妻雙方同意將房地產所有權歸屬配偶之一方使之成為獨立產權。同樣的規則也適用於同性婚姻的夫婦。
例如：布魯斯，買方，一個已婚男人，是他房地產的唯一和獨立的產權所有人。

▼ 共同所有權 由兩個或兩個以上的人擁有的財產可由以下幾種形式來獲取財產歸屬權：

- 共有財產：**
財產的歸屬權為已婚人士或家庭的合夥伴侶共同擁有。共有財產和私有獨立財產是有區別的，私有獨立財產是在結婚之前或在有家庭的合夥伴侶關係之前所獲得的財產。這包括在婚姻，或合夥伴侶關係之前所獲得的禮物或遺贈，或在合法分居後，-阿投資小保姆。配偶或同居伴侶一方所獲得的獨立財產擁有權的書面同意書。在加利福尼亞州，房地產轉讓給一個已婚的人士，或家庭的合夥伴侶，被視為共有產權，除非另有說明（即房地產以禮物或遺贈，或以協議的方式來成為獨立的私有產權）。由於配偶或同居伴侶雙方對共有財產擁有平等的產權，一切財產，都必須具有經雙方簽署所有財產轉讓，或將其財產作為貸款抵押的協議文件。各方有權處置其所有財產屬於他/她一半的權益。例如：布魯斯，買方，和芭芭拉，買方，丈夫和妻子，為產權共有。或莎莉·史密斯，和珍·史密斯，註冊為家庭的合夥伴侶，為財產共有。另一個例子，同性夫婦：莎莉·史密斯和珍·史密斯，配偶，為產權共有。

2. 共有產權未亡人的財產權利：

家庭的合夥伴侶共同擁有。這種擁有產權的形態類似共有產權，並與其具有同樣的特點，但卻增加了未亡人的權利和利益。持有這種形態的產權擁有者，有可能享有產權持有者的稅收優惠權。產權持有人死亡時，死者的權益結束，未亡人即擁有共同財產的所有利益及權利。例如：例如：布魯斯，買方，和芭芭拉，買方，丈夫和妻子，為財產共有并擁有產權未亡人的財產權利，或約翰，買方，和比爾，買方，配偶，為財產共有并擁有產權未亡人的財產權利。另一個同性配偶的例子：莎莉·史密斯，和珍·史密斯，註冊為家庭的合夥伴侶，為財產共有并擁有產權未亡人的財產權利。

3. 聯名擁有：

由兩個或兩個以上的已婚或未婚人士或家庭的合夥伴侶所擁有的財產歸屬權，在平等權益的前提下可享有未亡人的產權未亡人之財產權利。雙方產權必須在同一時間取得，並必須是同一筆轉讓，而該文件必須明確聲明具有建立一個房地產產權共有的意思。當產權共有人一方死亡時，該財產的所有權依法會自動轉讓給共同財產的未亡人。因此，共有產權的財產不會受到遺囑的牽制。例如：布魯斯，買方，已婚的男人，和喬治，買方，單身漢，為產權共有人。

注：如果一個已婚之人，加入共有產權，而該共有產權不包括他們的配偶，產權信託公司可能會要求具有所有權的已婚男人或女人的配偶給予特定的同意。同樣的規則也適用於同性已婚夫婦和家庭的合夥伴侶。

4. 共有：

任何兩個或兩個以上共同擁有的產權和其不可分割的配額權益。這些配額權益可能是不平等的份量和期限，也可能會在不同的時間產生。每個產權共有人擁有財產的特定配額，根據其配額享有該財產收入的利潤，但必須根據其配額承擔該財產的支出和其費用。每個產權共有人可出售，出租或將屬於他/她的配額轉讓給遺囑中的繼承人。例如：布魯斯，買方，單身漢，擁有3/4不可分割的財產利益，潘妮，買方，單身女人，擁有1/4不可分割的財產利益。

產權歸屬的其他方式包括：

1. 信託的受託人：

信託是由擔保人將不動產的合法財產所有權轉移給受託人，該受託人持有財產所有權，並為指定的受益人管理其不動產。信託通常不是一個可以以自己的名義持有財產所有權的實體。反之，財產所有權時常歸屬信託中的受託人。例如：布魯斯買方家族信託的受託人。



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