



Methods of Holding Title

The comparison below is provided for general reference purposes only. It should not be used to determine how you hold title. We strongly recommend that you seek professional counsel from an attorney and/or CPA to determine the legal and tax consequences of how title is vested.

	Community Property	Joint Tenancy	Tenancy In Common	Title Holding Trust	Community Property Right of Survivorship
Parties	Only Married Spouses	Any number of persons (can be Married Spouses)	Any number of persons (can be Married Spouses)	Individuals, groups of persons, partnership or corporations, a living trust	Only Married Spouses
Division	Ownership and managerial interests are equal	Ownership interest must be equal	Ownership can be divided into any number of interests equal or unequal	The beneficial interest in the trust is a personal property interest. The trustees who create the trust may divide the beneficial interest into any number of interests.	Ownership and managerial interests are equal
Title	Title is in the "community." Each interest is separate but management is unified	Sale or encumbrance by joint tenancy serves joint tenancy	Each co-owner has a separate legal title to his/her undivided interest	Legal and equitable title is held by the trustee	Title is in the "community," management is unified
Possession	Both co-owners have equal management and control	Equal right of possession	Equal right of possession	Right of possession as specified in the trust provisions	Both co-owners have equal management and control
Conveyance	Requires written consent of other spouse or actual conveyance by deed. Separate interest is divisible by will	Title is held jointly. Conveyance by one co-owner without the others breaks the joint tenancy	Each co-owner's interest may be conveyed separately by its owner	Designated parties with the trust agreement authorize the trustee to convey property. Also a beneficiary's interest in the trust may be transferred. <i>*If allowed by the Trust Agreement</i>	Right of survivorship may be terminated pursuant to the same procedures by which a joint tenancy may be severed
Purchaser's Status	Purchaser can only acquire whole title of community; cannot acquire a part of it	Purchaser will become a tenant in common with other co-owners in the property as to the purchaser's interest. Other owners may remain joint tenants	All the co-owners may agree to make the purchaser a joint tenant with them. Otherwise, the parties become tenants in common	A purchaser may obtain a beneficial interest by assignment or may obtain legal and equitable title from the trust	A purchaser can only acquire an interest in property as a tenant in common with a husband and wife (can be Married Spouses) holding their interest as community property
Death	A 1/2 interest is owned by law by the surviving spouse. The decedent first spouse may only devise their 1/2 interest	On co-owner's death his/her interest ends and cannot be disposed of by will. Survivor owns the property by survivorship	On co-owner's death his/her interest passes by will to devisee or heirs. No survivorship right	Successor beneficiaries may be named in the trust agreement, eliminating the need for probate	Upon the death of a spouse, his/her interest passes to the surviving spouse, without administration, subject to the same procedures as property held in joint tenancy
Successor's Status	If passing by will, tenancy in common between devisee and surviving spouse results	Last survivor owns property	Devisee or heirs become tenants in common	Defined by the trust agreement, generally the successor becomes the beneficiary and the trust continues	Surviving spouse owns property
Creditor's Rights	Property of community is liable for debts of either spouse which are made before or after marriage. Whole property may be sold on execution sale to satisfy creditor	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Creditor becomes a tenant in common	Creditor may seek an order for the execution sale of the beneficial interest or, if the trust doesn't have a spendthrift clause, may seek an order that the trust estate be liquidated	Property of community is liable for debts of either which are made before or after marriage; whole property may be sold on execution sale to satisfy creditor
Presumption	Strong presumption that property acquired by Married Spouses is community	Must be expressly stated	Favored in doubtful cases except Married Spouse cases	A trust is expressly created by an executed trust agreement	Must be expressly stated