

How Can One Hold Title?

	COMMUNITY PROPERTY /DOMESTIC PARTNERSHIP	TENANCY IN COMMON	TRUST	JOINT TENANCY	AS A SEPARATE ESTATE
WHO CAN TAKE TITLE?	Only married spouses or domestic partners.	Any number of persons. May involve husband and wife or domestic partner.	The trustee holds title on behalf of the beneficiaries, which can be individuals, groups of persons, or other entities.	Any number of persons. May involve husband and wife or domestic partner.	Any individual may take title as his or her separate estate.
HOW IS OWNERSHIP DIVIDED?	Each spouse/partner is presumed to own a community interest in the real property after marriage or registration of domestic partnership.	Ownership can be divided into any number of interests, which may be equal or unequal.	The trustee holds legal title; the beneficiary(ies) hold equitable title.	Joint tenants must own equal undivided interests, acquire title by the same deed, and have equal rights to possess.	An individual owns a 100% interest in property held as his or her separate estate.
WHO HOLDS THE TITLE?	Title is usually vested as: John and Jane Doe, husband and wife; or John Doe and Jane Doe, domestic partners; or John Doe and Jim Smith, married spouses.	Title may be vested as: Amy, Barb, and Curt, tenants in common, each as to an undivided one-third interest.	The trustee holds legal title. Title is usually vested as: Jane Doe, Trustee of the John Doe Family Trust.	Title may be vested as: Andy, Bob, and Carol, all as joint tenants with right of survivorship.	If married or in a domestic partnership, title will be vested as: Amy, a married person as her separate estate. If in a domestic partnership, title may be vested as: Amy, a domestic partner as her separate estate. If single, title may be vested as: Bob, as his separate estate; or, Bob, a single person.
WHO HAS POSSESSION?	Each spouse/partner has the right to manage and control the property.	Tenants in common have an equal right of possession.	Right of possession as specified in the trust agreement.	Joint tenants have an equal right of possession.	If single, the individual in title has the right to possession. If married or a domestic partner, the non-owning spouse or domestic partner who resides on the land will have a homestead interest.
HOW DO OWNERS CONVEY THEIR INTEREST?	Both spouses/partners must convey by a single written deed. In limited circumstances, one spouse/partner may convey the real property associated with a family business.	Each tenant in common may convey his or her interest separately.	Pursuant to the trust agreement, the trustee conveys the trust property on behalf of the beneficiary(ies).	Conveyance by one joint tenant alone severs his/her joint tenancy.	In many cases, the owner of the separate estate conveys his/ her interest separately. If the owner of the separate estate is married or in a domestic partnership, in some circumstances a title company will require the owner's spouse or domestic partner to join in the deed.
WHAT IS THE PURCHASER'S STATUS?	Purchaser may acquire an interest, if the interest is conveyed by a deed signed and acknowledged by both spouses/partners.	Purchaser of a tenancy in common interest will become a tenant in common with the other co-owners of the property.	Purchaser may acquire legal and equitable title to the real property if the trustee executes a deed consistent with the trust agreement.	Purchaser of a joint tenant's interest will become a tenant in common with the other co-owners of the property.	If seller is single, purchaser may acquire an interest, if the interest is conveyed by a deed signed and acknowledged by the seller. If seller has spouse or domestic partner and seller's spouse/ domestic partner does not join in the deed, the purchaser <i>may</i> take title presumptively subject to a community interest of the seller's spouse/ partner.
WHAT HAPPENS IN CASE OF DEATH?	If a spouse/partner dies intestate (without a will), the decedent's community interest vests in the surviving spouse/partner.	Each tenancy in common interest may be devised by will.	If the trustee dies, a successor trustee may be named in the trust agreement, chosen by the trustor and beneficiaries, or appointed by the court.	On one joint tenant's death, his/her interest vests immediately in the surviving joint tenant(s).	Separate interests may be devised by will. If decedent was single and died intestate, the decedent's separate interest passes first to children, if any, then to parents, siblings, grand-parents, or cousins. If decedent was married or in a domestic partnership and died intestate, the spouse or domestic partner takes one-half, three quarters, or all of the separate estate, depending upon whether the decedent was survived by children, parents or siblings.
WHAT IS THE SUCCESSOR'S STATUS?	A spouse/partner may devise by will one-half of the community property. If so, a tenancy in common between devisee and survivor results.	Heirs or devisees become tenants in common with the other co-owners.	The successor trustee's status is defined by the trust agreement.	The last survivor owns the property as his or her property alone.	Heirs or devisees become tenants in common with other co-owners, if any.

This comparison chart is provided for general information only and should not be used to identify how you hold title. We strongly recommend that you seek the advice of independent counsel to determine the legal and tax consequences of how title is vested.