

Methods Of Holding Title

There are many methods of holding title to your property. The information provided below is intended for informational purposes only. It is important to seek professional counsel from an attorney and/or CPA to determine the legal and tax consequences of how you hold title to real property.

Methods of Holding Title

	Community Property	Community Property w/Right of Survivorship	Joint Tenancy	Tenancy in Common	Partnerships	Trust Arrangements
Parties	Husband and wife or domestic partners.	Husband and wife or domestic partners.	Any number of persons, but cannot be artificial entity such as corporation, LLC or trustee of trust.	Any number of persons or entities may hold title as tenants in common.	Only partners/shareholders/members of the artificial entity.	Trustee and beneficiaries of trust may be individuals, trusts or any legally created entity.
Division	Ownership and management are equal except control of business is solely with managing partner.	Ownership and management are equal except control of business is solely with managing partner.	Ownership interests must be equal (can have equal interests in undivided interest).	Ownership can be divided into any number of interests, equal or unequal.	Single legal entity, partners/shareholders/members own interest in entity, not property held.	Interests in trust are personal property and are in accordance with terms of trust.
Title	Title is in the "community." Each interest is separate but management is unified.	Title is in the "community." Each interest is separate but management is unified.	Each joint tenant has separate legal title to undivided interest, subject to right of survivorship.	Each owner has a separate legal title to undivided interest.	Title is in the artificial entity.	Held in name by the trustee(s).
Possession	Each spouse or partner has equal rights of management and control.	Each spouse or partner has equal rights of management and control.	Equal right of possession.	Equal right of possession.	Entity has sole right of possession. Entity's organizational documents determine individual partner's/shareholder's/member's rights, if any.	In accordance with terms of trust.
Conveyance	Both spouses or partners must convey or encumber in writing, or conveyance is void.	Both spouses or partners must convey or encumber in writing, or conveyance is void. Right of survivorship may be terminated by same joint tenancy.	Each owner's interest may be conveyed or encumbered individually, but conveyance or encumbrance without joinder of other joint tenants severs joint tenancy.	Each owner's interest may be conveyed separately.	Conveyance authority determined by organizational documents and applicable statutes.	Trustee has authority to convey in accordance with terms and limitations of trust agreement.
Death	On spouse's or partner's death, 1/2 belongs to surviving spouse/partner; 1/2 passes by will or, if no will, then passes to surviving spouse or partner.	Upon death of spouse/partner, interest passes to surviving spouse/partner without administration.	On co-owner's death, interest passes to surviving joint tenants. Interest may not be disposed of by will.	Interest passes by will or intestate, if no will. Interest must be probated.	Entity not capable of dying. Impact, if any, of death of partner/shareholder/member on affairs of entity determined by organizational documents and applicable statutes.	Upon death of trustee, successor trustee, if any, holds title on behalf of trust. Effect of interests in trust upon death of a beneficiary determined by terms of trust agreement.
Successor Status	If passing by will, tenancy in common with surviving spouse; if passes to spouse, then owned in entirety by surviving spouse.	If passing by will, tenancy in common with surviving spouse; if passes to spouse, then owned in entirety by surviving spouse.	Last survivor owns property.	Devisee or heir becomes tenant in common with other owners.	Interest, but not management authority, of partner/shareholder/member in the entity passes by will or, if no will, by intestate succession.	Defined by terms of trust agreement
Creditor's Rights	Property is liable for the debts of either spouse made before or after marriage, subject to homestead rights, if principal residence.	Property is liable for the debts of either spouse made before or after marriage, subject to homestead rights, if principal residence.	Involuntary lien of creditor or deed of trust terminates on death of joint tenant. If creditor executes on lien prior to death and acquires title, becomes tenant in common with remaining joint tenants.	Owner's interest may be sold on execution sale to satisfy creditor. Creditor becomes tenant in common with remaining owners.	Creditor of partner/shareholder/member may obtain order attaching interest in entity, but not property held by entity.	Creditor with lien/judgement against beneficiary may execute on beneficiary's interest in trust, not property held by trust. Lien against individual trustee may not attach to trust. However, if trustee is settlor or revocable trust, lien may attach.
Presumptions	Strong presumption that property taken as "husband and wife" or as "domestic partners" is community property.	Strong presumption that property taken as "husband and wife" or as "domestic partners" is community property.	Creation of joint tenancy must be in writing.	Joint ownership presumed to be as tenants in common, unless title acquired by "husband and wife."	Property must be expressly vested in partnership.	Property must be expressly vested in trustee of trust. Trust is created by executed trust agreement.