

Common Methods of Holding Title in California

California has recognized same sex marriages and non-marital relationships such as Domestic Partnerships for some time. The California Land Title Association's Summary of the methods of holding title, whether of same sex or not, follows:

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. 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, who are married to each other, 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.

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For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, husband and husband, 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 AS:

1. A Corporation*:

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

2. A Partnership*:

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act.

A partnership may hold title to real property in the name of the partnership.

3. 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.

4. Limited Liability Companies (LLC)*:

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation, its existence is separate from its owners.

*In cases of corporate, partnership, LLC or trust ownership - required documents may include corporate articles and bylaws, partnership agreements, LLC operating agreements and trust agreements and/or certificates.

Important

How title is vested has important legal consequences and tax consequences. The tax consequences may be different for same sex legally related couples. You may wish to consult an attorney or tax advisor to determine the most advantageous form of ownership for your particular situation.