

COMMON WAYS TO HOLD TITLE IN CALIFORNIA

BY RICHARD UMANOFF, CPA, MBA

We often get questions from clients on how to hold title to property they are about to purchase.

As real estate might be the most important asset that an individual or couple may own, how ownership is vested is extremely important.

Proper titling will affect the current and future rights of parties to the transaction, such as property taxes, income taxes, inheritance and gift taxes, transferability of title, potential probate, and exposure to creditors' claims.

In this article, we will discuss the most common methods of holding the title for individuals, couples, and co-owners.

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THERE ARE FOUR WAYS TO HOLD A TITLE:

- Sole Ownership
- Co-Ownership
- Joint Ownership
- Entity and hybrid ownership

Each of these methods has complexities, as well as possible repercussions to the owner and their partners or heirs, whether it be your home, a rental, or investment property.

Sole Ownership

An individual is acquiring a title in their own name. For example, let's meet Mary. Mary is a single woman, divorced with one child, who is buying her house on Happy Lane. Hopefully, she has a living trust, but let's say, for now, she hasn't set one up. She should hold the title as:

Mary, an unmarried woman

Co-Ownership

Mary meets John and they decide to buy a house together on Investors Pkwy – it's a business arrangement and they want her interest to go to her daughter if she passes away. They should hold titles as:

Mary, an unmarried woman, and John, an unmarried man, as tenants in common.

1. Tenancy in Common – A form of vesting title to property owned by two or more individuals in undivided fractional interests (that may not be equal), with each tenant in common owning a share of the property. Holding title as tenancy in common can still subject individuals' fractional interest to probate. They now each own 50% of the property and their ½ ownership becomes part of their estate.



Joint Ownership

Mary and John decide to get married. They are going to keep the house on Investors Pkwy and rent it out. They are going to buy a new house together AFTER they get married, as a married couple. They cannot have the same titles as Investors Pkwy since they are now married. They can hold property one of three ways:

1. Being married, the asset purchased is Community Property. Community Property is a form of vesting title owned together by married persons or by domestic partners and is distinguished from separate property as the property is purchased during the marriage. In California, real property conveyed to a married person is presumed to be community property, unless otherwise stated. Holding property as community property may still subject 50% of the property to probate upon the death of one of the owners.

2. Community Property with Right of Survivorship. This form of vesting will allow the property to transfer to another spouse or domestic partner and will avoid probate. This type of property title was created by the California State Legislature in 2001.

3. Joint Tenancy – Owned by two or more persons in equal interests. When a joint tenant dies, the title of the property is automatically conveyed by operation of law to surviving joint tenant(s) and allows the property to avoid probate and may allow for significant creditor protection.

Entity and Hybrid Ownership

1. Life Estates – Mary has an elderly mother and wants to give her the house on Happy Lane, but wants to make sure that it goes to Mary's daughter and not to Mary's brother, who is not good with money. Mary does not want to set up a trust, even though her attorney and accountants have recommended it. She can transfer a life estate to her mom, and on her mom's death, the house comes back into Mary's estate and then eventually to her daughter. The title would be held:

Mary's mom, a widow, holding a life estate.

This can be a very complex estate planning tool and should not be used without consultation with your estate attorney and tax professional.

2. Corporation – A legal entity created under state law that is separate from its shareholders. BE VERY CAREFUL IN HOLDING PROPERTY IN A CORPORATION AS THERE ARE SIGNIFICANT ESTATE AND INCOME TAX RAMIFICATIONS. Let's say Mary and John want to put Investors Pkwy into a corporation. They should be well advised on the implications of this transfer.

3. Partnership – An association of two or more persons who conduct business for profit as governed by the Uniform Partnership Act. Mary and John are joining forces with Pete and Maury and buy an apartment building – they form a partnership to hold and manage the building. The partnership agreement is the ruling document.

4. Mary and John FINALLY set up a living trust. They now become Trustees of Trust or Trusts – the legal title of proper is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of people specified in the trust agreement, called the beneficiaries. A living trust may have the same person as the grantor, trustee, and beneficiary. A trust is not an entity that can hold a title in its own name. Instead, the title is vested with the trustee of the trust. For example, Mary and John, trustees of the Smith Family Trust. Holding title in trust avoids probate.

5. Limited Liability Companies – A legal entity that is like either a corporation or a partnership. The operating agreement will determine how the LLC functions and is taxed. In the case of a corporate, partnership, LLC, or trust ownership, it will usually require submission of documents, such as corporate articles and bylaws, partnership agreement, LLC operating agreements, and trust agreement and/or certificates to take the title in its legal entity name.

It is important to note that how title is vested has important legal and tax implications. You may wish to consult with your attorney, tax advisor, or contact the KROST Estate & Gift, Trust and Probate team to determine the most advantageous form of ownership for your situation.

Note: Any changes to your estate plan must be drafted by your attorney.



About the Author

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His primary emphasis is estate and trust tax compliance, planning, estate administration, and probate court accounting. Richard currently serves in the role of trustee for numerous clients. » [Full Bio](#)



Would you like assistance with your Estate Plan? [Richard Umanoff](#) and [Doug Venturelli](#) are available to review your current estate plan, provide recommendations, and consult with your estate attorney.