

Sy Accountancy Corporation

Member, American Institute of CPAs

704 Mira Monte Place, Pasadena, California 91101

Tel (626) 744-0200 • Fax (626) 744-0300 • vsy@victorsycpa.com • www.victorsycpa.com

REAL ESTATE TITLE CHOICES - ALL

By Victor Sy, CPA, MBA

When buying real estate, there is always that inevitable question: how do we hold title? Remember that your choice can have dramatic impact on income and estate taxes, liability protection, heirs, family situations (children from previous marriages) and other factors. Let's explore the features of community property, joint tenancy, and community property with rights of survivorship, and tenants in common to help you determine which title is best for your next property.

Joint Tenancy:

- Any number of persons (not just husband & wife) can use joint tenancy.
- Ownership must be equal.
- There is only one title to the whole property.
- Each one has equal right of possession.
- Ownership by joint tenancy must be expressly stated (it cannot be presumed).
- Purchaser of a share becomes a tenant in common (see last choice below).
- A joint tenant's death passes his/her share to the survivors automatically.
- Surviving spouse can pass title by simply recording an Affidavit of Death of Joint Tenant.
- A deceased joint tenant's share cannot be deposed by will.
- Last survivor owns the property.
- Important: only the deceased spouse's ½ gets a step-up basis (more taxes).
- A joint tenant's interest can be sold on execution sale to satisfy a debt.
- The creditor becomes a tenant in common (not as joint tenant).

Community Property:

- Only husband and wife can own realty as community property.
- Both have equal ownership, management, and control.
- There is a strong presumption that any acquisition after marriage is community property.
- Any conveyance requires the written consent of the other spouse.
- Any buyer must acquire the whole property, not part of it.
- Title to property is in the community and cannot be sold separately.
- Each interest is separate but cannot be conveyed (except upon death).
- On death, ½ belongs to survivor, ½ to deceased spouse's estate or heirs.
- Changing title requires filing a "spousal property petition" in probate court.
- Important: both halves get a "step-up" basis to the fair market on death of either spouse (less taxes).
- If passing by will, survivor and heir become tenants in common.
- Creditors of one spouse can go after the whole property.
- Whole property can be sold on execution to satisfy creditor.
- Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Community Property With Right Of Survivorship:

- This is the newest form of ownership in the State of California.

- It combines the advantages of community property (100% step up basis) and joint tenancy (automatic passing of title to surviving spouse).
- Only husband and wife can have community property with right of survivorship.
- Ownership interest is equal & both have equal rights of possession.
- Title is in the community but each interest is separate.
- Co-owner's interest cannot be sold separately.
- But whole property may be sold on execution to satisfy a creditor of either spouse.

Tenancy In Common:

- Any number of persons (not just husband & wife) can be tenants in common.
- Ownership can be divided into any number of equal or unequal shares.
- Co-owners have separate legal titles.
- Co-owners have equal rights of possession.
- Co-owners can sell or dispose their interests separately.
- Purchaser of a share becomes tenant in common with other co-owners.
- On co-owner's death, his/her interest passes by will to heir or devisees (not to co-owners).
- A creditor can go after a co-owner without disturbing the other co-owners.
- Courts favor tenancy in common in doubtful cases (except between husband & wife).

You may get some tips from your real estate agent, loan broker, financial adviser, or tax preparer, but always consult a lawyer to determine which title is best for you. Good day.