

# Common Ways of Holding Title to Real Property



## Tenancy in Common

## Joint Tenancy

▶ <b>Parties</b>	Any number of persons. <i>(Can be husband and wife)</i>	Any number of persons. <i>(Can be husband and wife)</i>
▶ <b>Division</b>	Ownership can be divided into any number of interests, equal or unequal.	Ownership interests cannot be divided.
▶ <b>Title</b>	Each co-owner has a separate legal title to his undivided interest.	There is only one title to the entire property.
▶ <b>Possession</b>	Equal right of possession.	Equal right of possession.
▶ <b>Conveyance</b>	Each co-owner's interest may be conveyed separately by its owner.	Conveyance by one co-owner without the others breaks the joint tenancy.
▶ <b>Purchaser's Status</b>	Purchaser becomes a tenant in common with other co-owners.	Purchaser becomes a tenant in common with other co-owners.
▶ <b>Death</b>	On co-owner's death, his interest passes by will or intestate succession to his devisees or heirs. No survivorship right.	On co-owner's death, his interest ends and cannot be willed. Surviving joint tenants own the property by survivorship.
▶ <b>Successor's Status</b>	Devisees or heirs become tenants in common.	Last survivor owns property in severalty.
▶ <b>Creditor's Rights</b>	Co-owner's interest may be sold on execution sale to satisfy his creditor. Creditor becomes a tenant in common.	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes tenant in common.
▶ <b>Presumption</b>	Favored in doubtful cases.	None. Must be expressly declared.

*This is provided for informational purposes only. Specific questions for actual real property transactions should be directed to your attorney or C.P.A.*

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## HOW SHOULD I TAKE OWNERSHIP OF THE PROPERTY I AM BUYING?

This important question is one real property purchasers ask their real estate, escrow and title professionals every day. Unfortunately, though these professionals may identify the many methods of owning property, they may not recommend a specific form of ownership, as doing so would constitute the unauthorized practice of law.

Because real property has become increasingly more valuable, the questions of how parties take ownership of their property has gained greater importance. The form of ownership taken – the vesting of title – will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights involve such matters as: real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Also, how title is vested can have significant probate implications in the event of death.

North American Title Company of Colorado (NATCO) advises those purchasing real property to give careful consideration to the manner in which title will be held. Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.

NATCO has provided the following definitions of common vestings as an informational overview. Consumers should not rely on these as legal definitions. NATCO urges real property purchasers to carefully consider their titling decisions prior to closing, and to seek counsel should they be unfamiliar with the most suitable ownership choice for their particular situation.

## SOLE OWNERSHIP

Sole ownership may be described as ownership by an individual or other entity capable of acquiring title.

## CO-OWNERSHIP

Title to property owned by two or more persons may be vested in the following forms:

### ► JOINT TENANCY:

A form of vesting title to property owned by two or more persons, who may or not be married, in equal interest, 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 and Barbara Buyer, as joint tenants with rights of survivorship.

### ► TENANCY IN COMMON:

A form of vesting title to property owned by 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 the expenses. Each co-tenant may sell, lease, or will to his/her heir(s) that share of the property belonging to him/her. For example: Bruce Buyer as to an undivided  $\frac{3}{4}$  interest and Penny Purchaser, as to an undivided  $\frac{1}{4}$  interest as tenants in common.

*Other entities who may hold title include:*

### 1. A CORPORATION:\*

A corporation is a legal entity created under state law, consisting of one or more shareholders but regarded under state 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. A TRUST:\*

A Trust is an arrangement whereby legal title to property is transferred by the 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.

### 4. A LIMITED LIABILITY COMPANY (L.L.C.):\*

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 L.L.C. functions and is taxed. Like the corporation, its existence is separate from its Owners'.

*\*In cases of corporate, partnership, trust or LLC ownership, the title company will require that it be furnished legal documents so that it may satisfy itself as to ownership rights of the parties to the transaction and any limitations which may exist on the sale, transfer or encumbrance of the property. Required documents may include corporate articles and bylaws, certificates of ownership, partnership agreements, operating agreements and trust agreements.*

### Remember:

How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.