

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY with Right of Survivorship
Parties	Two or more persons <sup>1</sup>	Two or more natural persons	Spouses or domestic partners <sup>2</sup>	Spouses or domestic partners <sup>2</sup>
Division	Ownership can be divided into any number of interests, equal or unequal	Ownership interests must be equal	Ownership interests must be equal	Ownership interests must be equal
Creation	One or more conveyances (law presumes interests are equal if not otherwise specified)	Single conveyances (creating identical interests); vesting must specify joint tenancy	Presumption from marriage or domestic partnership or can be designated in deed	Single conveyance and spouses or domestic partners must indicate consent which can be on deed
Possession & Control	Equal	Equal	Equal	Equal
Transferability	Each co-owner may transfer or mortgage their interest separately	Each co-owner may transfer his/her interest separately but tenancy in common results	Both spouses or domestic partners must consent to transfer or mortgage	Both spouses or domestic partners must consent to transfer or mortgage
Liens Against One Owner	Unless married or domestic partners, co-owner's interest not subject to liens of other debtor/owner but forced sale can occur	Co-owner's interest not subject to liens of other debtor/owner but forced sale can occur if prior to co-owner's/ debtor's death	Entire property may be subject to forced sale to satisfy debt of either spouse or domestic partner	Entire property subject to forced sale to satisfy debt of either spouse or domestic partner
Death of Co-Owner	Decedent's interest passes to his/her devisees or heirs by will or intestacy	Decedent's interest automatically passes to surviving joint tenant ("Right of Survivorship")	Decedent's 1/2 interest passes to surviving spouse or domestic partner unless otherwise devised by will	Decedent's 1/2 interest automatically passes to surviving spouse or domestic partner due to right of survivorship
Possible Advantages/ Disadvantages	Co-owners interests may be separately transferable <sup>3</sup>	Right of Survivorship (avoids probate); may have tax disadvantages for spouses	Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner may have tax advantage <sup>2</sup>	Right of survivorship; mutual consent required for transfer; surviving spouse or domestic partner may have tax advantage

<sup>1</sup> Persons includes a natural person as well as validly formed cooperation, limited partnership, limited liability company or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).  
<sup>2</sup> Transfers by spouses/domestic partners may require a quitclaim deed from the other spouse/partner for title insurance purposes.  
<sup>3</sup> If co-Owners are spouses/domestic partners, property may be subject to legal presumption of "community property" requiring consent of both spouses/partners to convey or encumber title notwithstanding vesting as "joint tenancy"  
 THIS IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING GUIDANCE, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

## Vesting Descriptions

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-ownership. Co-ownership of real property occurs when title is held by two or more persons. There are several variations as to how title may be held in each type of ownership. The following brief summaries reference some of the most common examples of each as providing by the California Land Title Association.

▼ **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. A 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, spouses, 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. For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, spouses, 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 and 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:**

- 1. 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.



**ANGIE TANG**  
 VP STRATEGIC RELATIONSHIPS  
 MOBILE 626.394.2882 | E-FAX 626.209.2278  
 angie@titlebyangie.com  
 www.titlebyangie.com



**First American Title™**

818.550.2581 | www.firstam.com

# 產權歸屬權

## 拥有产权的方式

	共有 ("TENANCY IN COMMON")	联名拥有 ("JOINT TENANCY")	联合财产 ("COMMUNITY PROPERTY")	自动转移联合财产 自動轉移聯合財產 ("COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP")
当事人	兩人或更多人 <sup>1</sup>	两个或两个以上的自然人	配偶或同居伴侣	配偶或同居伴侣
划分	所有权可分割为任意数量的利益，均等或不均等皆可	所有权必须均等	所有权必须均等	所有权必须均等
建立	一笔或多笔转让（若无特别注明，利益依法均等）	单一转让（建立相同利益）；归属必须指定联名拥有	推定的婚姻或同居关系，也可以依契约指派	单一转让和配偶或同居伴侣，必须在契约中标示哪一个可以核准
持有与控制	均等	均等	均等	均等
可转让性	每一位共有人可个别转移或抵押其利益 <sup>2</sup>	每一位共有人可个别转移其利益，但共有会导致 <sup>3</sup> 和 <sup>4</sup>	配偶或同居伴侣必须同时同意转移或抵押	配偶或同居伴侣必须同时同意转移或抵押
拥有人的抵押权	每一位共有人可个别转移或抵押其利益 <sup>2</sup>	每一位共有人可个别转移其利益，但共有会导致 <sup>3</sup> 和 <sup>4</sup>	整个产权可能被迫拍卖，以满足配偶或同居伴侣的债权	整个产权可能被迫拍卖，以满足配偶或同居伴侣的债权
共有人死亡	死者的利益透过遗嘱或无遗嘱转移给死者的受赠人或继承人	死者的利益自动转移给尚存的联合持有人（「联合财产」）	死者的二分之一利益转移给未亡配偶或同居伴侣，除非依遗嘱遗赠	依联合财产权，死者的二分之一利益自动转移给未亡配偶或同居伴侣
可能的利弊	共有人利益可个别转移 <sup>3</sup>	联合财产权（避免遗嘱认证）；配偶可能有纳税缺点	合格的生存权；需双方同意转移；未亡配偶或同居伴侣 <sup>2</sup> 可能有纳税利益	生存权；需双方同意转移；未亡配偶或同居伴侣 <sup>2</sup> 可能有纳税利益

1. 「人」包括自然人、合法成立的公司、有限合伙企业、有限责任公司或普通合伙。信托财产归属于受托人（通常是自然人或法人）  
 2. 为了投保产权保险，由已婚者或同居伴侣转让可能需要配偶/伴侣的产权转让契约。  
 3. 如果共有人结婚或同居伴侣，产权可能会受到「共有财产」的法律推定，要求配偶/伴侣双方同意转移或抵押产权，不论是否归属为「联名拥有」

此项资讯仅供一般参考。对于特定的问题或有关财务，税务或遗产规划的指南，我们建议您联络律师或合法的会计师。

## 归属描述

位于加州的房产权可以由个人持有，方式包括全权拥有和共同拥有。房产的共同拥有权出现于产权为两个或以上的个人共同持有时。产权可能的不同持有方式会产生几种变动。下列简要总结了有关全权拥有和共同拥有的八个较为常见的例子。加州土地产权协会汇集一些最常见的例子提供以下简要资料以供参考。

### ▼ 独资-独资的产权所有权乃为个人或可取得所有权的组织或公司所有。独资所有权归属案件的常例为：

- 单身男性或女性，未婚男性或女性，寡妇或鳏夫：**  
未合法结婚之男人或女人，或未具有家庭的合作伙伴关系。例如：布鲁斯，买方，一个单身男人。
- 已婚之男人或女人，具有属于他/她个人的独立房地产：**  
一个已婚的男人或女人，希望房地产的所有权状上只具有他/她个人的名字时，产权保险公司将会要求此已婚男人或女人之配偶给以特别声明放弃他或她对该房地产所拥的所有权，和所有相关的权利和利益。此项声明确立夫妻双方同意将房地产所有权归属配偶之一方使之成为独立产权。同样的规则也适用于同性婚姻的夫妇。例如：布鲁斯，买方，一个已婚男人，是他房地产的唯一和独立的产权所有人。
- 家庭的合作伙伴，是他/她房地产的唯一和独立的产权所有人**  
家庭的合作伙伴，希望房地产的所有权状上只具有他/她个人的名字。产权保险公司将会要求此已婚男人或女人之配偶特别声明放弃他或她对该房地产所拥的所有权，和所有相关的权利和利益。此项声明确立夫妻双方同意将房地产所有权归属配偶之一方使之成为独立产权。同样的规则也适用于同性婚姻的夫妇。例如：布鲁斯，买方，一个已婚男人，是他房地产的唯一和独立的产权所有人。

### ▼ 共同所有权，由两个或两个以上的人拥有的财产可由以下几种形式来获取财产归属权：

- 共有财产：**  
产的归属权为已婚人士或家庭的合作伙伴共同拥有。共有财产和私有独立财产是有区别的，私有独立财产是在结婚之前或在有家庭的合作伙伴关系之前所获得的财产，这包括在婚姻，或合作伙伴关系之前所获得的礼物或遗赠，或在合法分居后，-阿投资小保姆。配偶或同居伴侣一方所获得的独立财产拥有权的书面同意书。在加利福尼亚州，房地产转让给一个已婚的人士，或家庭的合作伙伴，被视为共有财产，除非另有说明（即房地产以礼物或遗赠，或以协议的方式成为为独立的私有财产）。由于配偶或同居伴侣双方对共有财产拥有平等的产权，一切财产，都必须具有经双方签署所有财产转让，或将其财产作为贷款抵押的协议文件。各方有权处置共有财产属于他/她一半的权益。例如：布鲁斯，买方，和芭芭拉，买方，丈夫和妻子，为产权共有人。或莎莉·史密斯，和珍·史密斯，注册为家庭的合作伙伴，为财产共有人。另一个例子，同性夫妇：莎莉·史密斯和珍·史密斯，配偶，为产权共有人。

### 2. 共有产权未亡人的财产权利：

财产的归属权为已婚人士或家庭的合作伙伴共同拥有。这种拥有产权的形态类似共有产权，并与其具有同样的特点，但却增加了未亡人的权利和利益。持有这种形态的产权所有者，有可能享有产权持有者的税收优惠权。产权持有人死亡时，死者的权益结束，未亡人即拥有共同财产的所有利益及权利。例如：例如：布鲁斯，买方，和芭芭拉，买方，丈夫和妻子，为财产共有人并拥有产权未亡人的财产权利，或约翰，买方，和比尔，买方，配偶，为财产共有人并拥有产权未亡人的财产权利。  
 另一个同性配偶的例子：莎莉·史密斯，和珍·史密斯，注册为家庭的合作伙伴，为财产共有人并拥有产权未亡人的财产权利。

### 3. 共有产权：

由两个或两个以上的已婚或未婚人士或家庭的合作伙伴所拥有的财产归属权，在平等权益的前提下可享有未亡人的产权未亡人之财产权利。双方产权必须在同时间取得，并必须是同一笔转让，而该文件必须明确声明具有建立一个房地产权共有的意愿。当产权共有人一方死亡时，该财产的所有权依法会自动转让给共同产权的未亡人。因此，共有产权的财产不会受到遗嘱的牵制。例如：布鲁斯，买方，已婚的男人，和乔治，买方，单身汉，为产权共有人。  
 注：如果一个已婚之人，加入共有产权，而该共有产权不包括他们的配偶，产权信托公司可能会要求具有所有权的已婚男人或女人的配偶给予特定的同意。同样的规则也适用于同性已婚夫妇和家庭的合作伙伴。

### 4. 共有产权：

任何两个或两个以上共同拥有的产权和其不可分割的配额权益。这些配额权益可能是不平等的份量和期限，也可能会在不同的时间产生。每个产权共有人拥有财产的特定配额，根据其配额享有该财产收入的利润，但必须根据其配额承担该财产的支出和其费用。  
 每个产权共有人可出售，出租或将属于他/她的配额转让给遗属中的继承人。例如：布鲁斯，买方，单身汉，拥有3/4不可分割的财产利益，潘妮，买方，单身女人，拥有1/4不可分割的财产利益。

### 产权归属权的其他方式包括：

#### 1. 信托的受托人：

信托是由担保人将不动产的合法财产所有权转移给受托人，该受托人持有财产所有权，并为指定的受益人管理其不动产。信托通常不是一个可以以自己的名义持有财产所有权的实体。反之，财产所有权时常常归属信托中的受托人。例如：布鲁斯买方家族信托的受托人。



**ANGIE TANG**  
 VP STRATEGIC RELATIONSHIPS  
 MOBILE 626.394.2882 | E-FAK 626.209.2278  
 angie@titlebyangie.com  
 www.titlebyangie.com



**First American Title™**

818.550.2581 | www.firstam.com