



Bay Area Property Ownership: Joint Tenancy, Tenants in Common or Community Property?

In California, when you own real property with another person, you can hold it in one of 3 different ways: **Joint Tenancy; Tenants in Common, and; Community Property**

Joint Tenancy

In a Joint Tenancy, two or more people hold title to real estate with equal rights and distribution of that property. Upon death of one member of the Joint Tenancy, their share of the property passes to the surviving tenant(s). Joint tenancy property cannot be transferred by will, it transfers by operation of law upon the death of joint tenant.

Any financing or use of the property for income must be unanimously approved by the parties involved. A creditor coming to collect debt from one owner could petition to divide the property and force a sale in order to collect debt, which creates an added risk in your co tenants' financial choices.

Property held in joint tenancy does not go through probate until the last owner dies. In the unlikely event that the joint owners die simultaneously, there is no right of survivorship to transfer to the living partner and each owner's interest is passed to the beneficiaries named in their trust or will. In the absence of any estate planning, property passes to closest relatives under California "intestate succession" laws.

Tenants in Common

In a tenant in common relationship, owners can own equal or different percentages of the property such as a 60/40 split. Tenants in common can individually sell their ownership in a property. This same transfer ability also applies to inheritance, meaning children can inherit their parents share in a property. That is, property held as tenants in

common can pass through by will, the property does not automatically transfer to the surviving co-tenants which is what happens with joint tenancy property.

Said another way, the biggest difference between holding ownership as Joint Tenants versus as Tenants in Common is that a surviving owner of property held as a Tenant in Common does not have a right of survivorship. Thus, when a co-tenant dies, his or her share of the property becomes part of his or her estate.

Tenants in common allows one owner to leverage their portion of the property as collateral to make loans, whereas in a Joint Tenancy, you would need all owners to agree to use of the property as collateral. Creditors can only place liens and claim after one owner's particular portion, avoiding the interdependence of the Joint Tenancy.

Unrelated individuals holding investment properties such as apartments, restaurants, office buildings and warehouses in San Mateo, San Francisco, Santa Clara and Alameda Counties will often hold properties as tenants in common if they have not transferred the property into an LLC or corporation.

Community Property

Community Property is a form of ownership available only to married couples in California and other community property states. With community property, either spouse has the right to dispose of one half of the property by gift or by devise (though a will or trust).

There are 9 community property states: California, Arizona, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin with Alaska as an opt-in community property state. If you live in the Greater Bay Area, the property that you own with your spouse will be considered Community Property if you purchased it while married together and you took title as community property

Community property is generally defined as property that you, your spouse, or both acquire during the marriage with community funds and property that both spouses agreed to convert from separate to community property, or property that cannot be identified as separate property, likely as a result of comingling separate property assets with community property assets.

Community Property is subject to a double "step-up" in tax basis at the death of either spouse. When the first spouse dies, the property is reassessed at fair market value and assigned a new real estate tax basis which is usually substantially higher than the current basis. The double step up in tax basis means that both partners share of the property is reassessed. If you own property in the Bay Area, you can avoid the double step up in tax basis at the death of the first spouse by holding the property in trust so that second step up in basis does not occur until the death of the second spouse, saving you thousands of dollars in real estate tax.

For more information on the advantages and disadvantages of ownership property types, feel free to contact our offices and/or attend one of our Lunch-and-learn events in person or by webinar.

At McDowall Cotter, APC, we offer decades of experience with wealth preservation and [estate planning](#) and a commitment to the kind of rigorous ongoing education that guarantees its integrity and success. If you are based in the San Francisco Peninsula, South Bay, Alameda County, and San Francisco, and are looking to make or update an existing will or trust, please feel free to schedule a consultation with our attorneys at McDowall Cotter, APC, or join our events and meet our attorneys!

Jonathan Liu