

## TENANCY IN COMMON

### PROS

- Tenants-In-Common (co-owners) may own unequal shares.
- Smaller initial investment (i.e. if you establish simple Will vs. Trust).

### CONS

- Probate generally required on the death of each and every co-owner
- No full "step-up" in tax basis on death of the first co-owner spouse.
- If any co-owner becomes incapacitated, the other co-owner(s) can't sell, refinance, or manage the property (without conservatorship or power of attorney).
- No creditor protection available for loved ones inheriting a co-owner's interest.

## BUSINESS ENTITY

*(e.g. LLC, Limited Partnership or Corp.)*

For asset protection, estate and gift tax mitigation, and management/control purposes, establishing and holding title to investment property (not your residence) in a business entity can be very advantageous. The business entity interest is then typically assigned into your Living Trust to afford you its many benefits. Pros & Cons are beyond the scope of this brochure.

*Note: without a Living Trust, on the death of the surviving spouse (if not also on the death of the first spouse), a probate proceeding will be required for the business entity interest.*

Regardless of how you ultimately choose to hold title to your property, it should be integrated with your estate plan. Everyone should have the benefit of an appropriate, comprehensive estate plan. An experienced estate planning attorney should be able to provide advice and guidance in connection with both your real estate titling concerns and your broader estate planning needs.



The author is Robert J. Silverman, a Bay Area attorney whose practice focuses on: Estate Planning (Living Trusts, Wills, Powers of Attorney, etc.); Estate Administration (including Probate) Real Estate; and Business.

Mr. Silverman offers a brief, free phone consultation regarding estate planning and alternative methods of holding title to real estate. Upon request, Mr. Silverman will also send you a complimentary Estate Planning primer.



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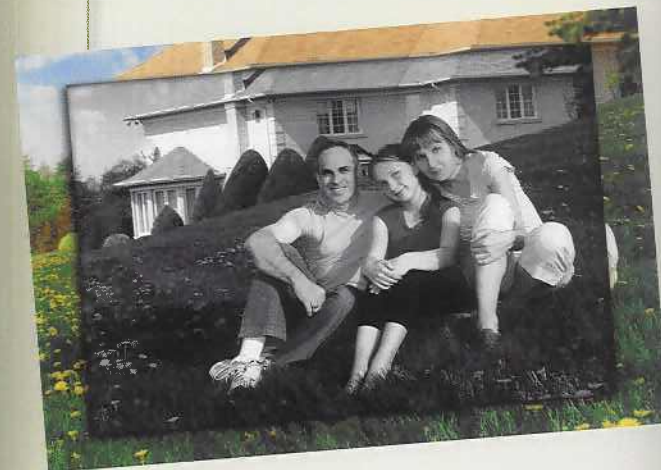
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## REAL PROPERTY OWNER

..... A very important title



The manner in which you hold title means more than you might think. It can save (or cost) you and your loved ones many thousands of dollars, and substantial time and inconvenience.

Learn about your titling choices  
for California real estate!

*Provided Compliments of:*

## REVOCABLE (aka "LIVING") TRUST

### PROS

- Probate avoidance on owner's death (if married, no probate required on either spouse's death).
- Serves as a Will substitute - directs distribution to loved ones precisely when and how you wish.
- Surviving spouse receives fully "stepped up" tax basis on first spouse's death.
- Can be structured to provide creditor protection for ultimate trust beneficiaries (e.g. children, loved ones).
- If owner(s) becomes incapacitated, pre-designated successor trustee may sell, refinance and manage property without court intervention (avoiding a conservatorship court proceeding).
- Provides many other valuable estate planning benefits that are unavailable with a simple Will.

### CONS

- Larger initial investment to establish Living Trust (vs. a simple Will).

*Note: Holding title to California real estate in your Living Trust is generally the most favorable alternative, whether you're married or unmarried.*

## COMMUNITY PROPERTY

*(only available for married couples)*

### PROS

- Surviving spouse receives fully "stepped-up" tax basis on first spouse's death.
- Probate may be avoided on death of first spouse.
- Smaller initial investment (i.e. if you establish simple Wills instead of a Living Trust).

### CONS

- Probate required on the surviving spouse's death.
- If either spouse becomes incapacitated, the other spouse can't sell, refinance, or manage the property (without a conservatorship or power of attorney).
- With just a simple Will (or no Will), no control over how or when a spouse's interest is distributed to the surviving spouse and/or loved ones.

## COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

*(only available for married couples)*

Pros & Cons are the same as Community Property (without the "Right of Survivorship" designation), except that this form offers the advantage of definitively avoiding a full probate proceeding on the death of the first spouse. By right of survivorship (R.O.S.), the surviving spouse automatically receives the entire community property interest that was owned by the deceased spouse.

*Note: The key disadvantage remains that a probate proceeding will be required on the death of the surviving spouse.*

## JOINT TENANCY

*(available to two or more co-owners)*

### PROS

- Probate avoided on the death of any joint tenant (co-owner) other than the last one. By R.O.S., the surviving co-owner(s) automatically own the interest of the deceased co-owner.
- Smaller initial investment (i.e. if the joint tenants establish simple Wills instead of a Living Trust).

### CONS

- All co-owners must own equal shares.
- A probate proceeding is required on the last co-owner's death.
- If a co-owner becomes incapacitated, the other co-owner(s) can't sell, refinance, or manage the property (without a conservatorship proceeding or power of attorney).
- No creditor protection available for loved ones who are surviving co-owners.
- Doesn't afford control over how or when the interest of a co-owner is distributed on death - surviving co-owner(s) own it automatically (regardless of what the deceased co-owner's Will provides).
- Full "step-up" in tax basis on the death of the first co-owner spouse is uncertain.

Real estate agents, loan agents, and financial and insurance advisors can provide very valuable assistance to home buyers and home owners. However, having a real estate license, or financial or insurance credentials, does not qualify these professionals to give their clients legal or tax advice. Since the manner in which you hold title to your real property has serious legal and tax consequences, you should obtain legal and tax advice from a qualified attorney and/or tax professional.

Every owner's situation is different. Accordingly, this brochure is not an adequate substitute for obtaining specific, independent legal and tax advice. Hopefully, however, it will give you a helpful overview from which you will understand most of the alternative forms of holding title that are available to you\*, and some of the more important consequences of choosing among the various forms.

*\*Holding title in your name individually is not covered in this brochure. For an individual, holding title in a Living Trust is typically preferable - see "Revocable (aka "Living") Trust" section on next panel.*

