

Fidelity National Title

COMMON WAYS OF HOLDING TITLE (VESTING)

The comparison below is provided for informational purposes only, and does not constitute legal advice or create an attorney-client relationship. Please consult your attorney for detailed information about the best option for our specific needs.

	COMMUNITY PROPERTY	JOINT TENANCY	TENANCY IN COMMON (DEFAULT IN IDAHO)	PARTNERSHIP HOLDING TITLE	TRUST	COMMUNITY PROPERTY W/RIGHT OF SURVIVORSHIP
PARTIES	Married spouses	Any number of persons must include "with right of survivorship" language	Any number of persons or entities	Only partners (any number)	Individuals, groups of persons, partnerships, corporations or other entities	Married spouses
DIVISION	Ownership and managerial interests are equal	Ownership interest must be equal	Ownership can be divided into any number of interests equal or unequal	Ownership interest is in relation to interest in partnership	Ownership is a personal property interest and can be divided into any number of interests	Ownership and managerial interests are equal
TITLE	Title is in the "community." Each interest is separate but management is unified	Sale or encumbrance by joint tenant severs joint tenancy	Each co-owner has a separate legal title to his/her undivided interest	Title is in the "partnership"	Legal title is held by the trustee; beneficiary has equitable title	Title is in the "community": management is unified
POSSESSION	Both co-owners have equal management and control	Equal right of possession	Equal right of possession	Equal right of possession but only for partnership purposes	Right of possession as specified in the trust provisions	Both co-owners have equal management and control
CONVEYANCE	Property requires written consent of other spouse, and separate interest cannot be conveyed except upon death	Conveyance by one co-owner without the others breaks the joint tenancy	Each co-owner's interest may be conveyed separately by its owner	Any authorized partner may convey part or entire interest in partnership property for partnership purposes. Purchaser acquires interest that partnership owned	Designated parties within the trust agreement authorize the trustee to convey property. Also, a beneficiary's interest in the trust may be transferred	Right of survivorship may be terminated pursuant to the same procedures by which a joint tenancy may be severed
PURCHASER'S STATUS	Purchaser can only acquire whole title of community; cannot acquire a part of it	Purchaser will become a tenant in common with the other co-owners in the property as to the purchaser's interest.	Purchaser will become a tenant in common with the other co-owners in the property	Purchaser can acquire part of entire interest in partnership property. Within part, the purchaser will become tenant in common with the partnership	A purchaser may obtain a beneficiary's interest by assignment or may obtain legal and equitable title from the trust	Purchaser can only acquire whole title of community; cannot acquire a part of it
DEATH	On co-owner's death, 1/2 belongs to survivor in severalty. 1/2 goes by will to descendant's devisee or by succession to survivor	"Surviving joint tenant or tenants own the property by survivorship right; documented by recording death certificate and affidavit of survivorship	On co-owner's death, his/her interest passes by will to devisee or heirs. No survivorship rights	On partner's death, his/her partnership interest passes to the surviving partner pending liquidation of the partnership. Share of deceased partner then goes to his/her estate	Trust assets transfer to beneficiaries named in the trust agreement, eliminating the need for probate as to trust assets	Upon the death of a spouse, his/her interest passes to the surviving spouse, without administration, subject to the same procedures as property held in joint tenancy
SUCCESSOR'S STATUS	If passing by will, tenancy in common between devisee and survivor results	Last survivor owns property	Devisee or heirs become tenants in common	Heirs or devisee have rights in partnership interest but not specific property	Successor trustees' and beneficiaries' rights set forth in trust agreement	Surviving spouse owns property
CREDITOR'S RIGHTS	Property of community is liable for debts of either spouse, which are made before or after marriage. Whole property may be sold on execution sale to satisfy creditor	Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Joint tenancy is broken, creditor becomes a tenant in common	Co-owner's interest may be sold on execution sale to satisfy his/her creditor. Creditor becomes a tenant in common	Partner's interest may be sold separately by "Charging Order" by his/her personal creditor, or his/her share of profits may be obtained by a personal creditor. Whole property may be sold on execution sale to satisfy partnership creditor	Creditor may seek an order for execution sale of the beneficial interest or may seek an order that the trust estate be liquidated and the proceeds distributed	Property of community is liable for debts of either which are made before or after marriage; whole property may be sold on execution sale to satisfy creditor
PRESUMPTION	Strong presumption that property acquired by married spouses is community	Must be expressly stated	Default in Idaho	Arise only by virtue or partnership status in property placed in partnership	A trust is expressly created by an executed trust agreement	Must be expressly stated

