



# Title & Tenancy Guidelines

	Tenancy in Severalty	Tenancy in Common	Joint Tenancy	Tenancy by the Entirety
<b>TENANCY DEFINITION</b>	Property held by one party, severed from all others	Property held by 2 or more persons, with <b>no</b> right of survivorship	Property held by 2 or more <u>individuals</u> (no corporations, partnerships, etc). Includes right of survivorship	Property held by husband and wife or Hawaii registered Reciprocal Beneficiaries. Includes right of survivorship
<b>CREATION OF THE TENANCY</b>	Any transfer to one party	By express act; also by failure to express the tenancy	Express intention plus 4 unities of time, title, interest and possession (with statutory exception)	Express intention. Divorce terminates for husband & wife-marriage terminates Reciprocal Beneficiaries - automatically results in tenancy in common
<b>POSSESSION</b>	Total	Equal right of possession	Equal right of possession	Equal right of possession
<b>TITLE TO THE PROPERTY</b>	One title in one party	Each co-owner has a separate legal title to his undivided interest; will be equal interests unless expressly made unequal	One title to the whole property since each tenant is theoretically deemed owner of whole; must be equal undivided interests.	One title in the tenancy unit
<b>CONVEYANCE OF INTEREST</b>	No restrictions (check release of marital rights, if any)	Each co-owner's interest may be conveyed separately by its owner; purchaser becomes tenant in common	Conveyance of 1 co-owner's interest breaks his tenancy; purchaser becomes tenant in common	Cannot convey without the other tenant
<b>EFFECTS OF DEATH ON THE TENANCY</b>	Entire property subject to probate	Decedent's fractional interest subject to probate. The property passes, by will to devisees or to the heirs, who take as tenants in common. No survivorship rights	No probate - cannot be disposed of by will; property automatically belongs to surviving co-tenants (last one holds in severalty).	Right of survivorship - no probate
<b>CREDITOR'S RIGHTS</b>	Subject to creditor's claims	Co-owner's fractional interest may be sold to satisfy a creditor who then becomes tenant in common	Joint tenancy is broken and purchaser becomes tenant in common. Creditor gets nothing (as to the property) if debtor tenant dies before sale	A judgment creditor only of <u>both</u> tenants can execute on property. Federal liens may attach to the property.

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## Title & Tenancy

### **DID YOU KNOW?**

#### ▶ **Tenancy in Severalty - Property owned by *John Smith***

- Liens against *John* are liens against his property, and will continue to attach after *John's* death.
- Upon *John's* death, his interest passes to his heirs or devisees through probate proceedings.

#### ▶ **Joint Tenancy - Property owned by *Janet Chang, Suzy Jones, and Linda Ortega***

- *Janet*, *Suzy*, and *Linda's* interests in the property must be equal – each has a 1/3 interest.
- A lien against *Linda* is a lien against her 1/3 interest in the property only; upon *Linda's* death, that lien is ineffective as to the property.
- *Janet* does not need *Suzy* or *Linda's* consent, nor does she need to give them notice, if she (*Janet*) wishes to sell her interest in the property to others.
- Includes right of survivorship – meaning, upon death of *Suzy Jones*, her interest in the property passes to *Janet* and *Linda* without probate proceedings.

#### ▶ **Tenancy by the Entirety - Property owned by *Harry and Joyce Liu, husband and wife***

- *Harry* and *Joyce* must be legally-married.
- Also for parties with a registered reciprocal beneficiary relationship (parties who may not legally marry - such as two brothers, mother-daughter, two friends of the same sex - and who are not currently married to another person).
- Includes right of survivorship - upon death of *Harry*, interest passes to *Joyce* without probate proceedings.
- Judgment liens against *Harry*, but not *Joyce*, do not attach to the property.
- Federal Tax Liens and Child Support Liens against *Harry*, but not *Joyce*, DO attach to the property.
- Neither *Harry* nor *Joyce* may sell, mortgage, etc. without the other's consent.

#### ▶ **Tenancy in Common - Property owned by *Tom James (2/3 interest) and Fred Johnson (1/3 interest)***

- No right of survivorship between the co-tenants - upon death of *Tom*, his 1/3 interest goes to his heirs or devisees through probate proceedings.
- A lien against *Tom* is a lien against only his 2/3 interest in the property.
- *Tom* may sell, mortgage, etc. his interest without *Fred's* knowledge or permission.