

# 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!

— *RS* —  
**R. Silverman**  
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# *Table of Contents*



1. [Preface](#)
2. [Revocable Living Trust](#)
3. [Community Property](#)
4. [Community Property With Right of Survivorship](#)
5. [Joint Tenancy](#)
6. [Tenancy in Common](#)
7. [Business Entity \(e.g. an LLC or Corp.\)](#)
8. [Contact Me](#)



# Preface

Real estate agents, loan agents and financial and insurance advisors provide valuable assistance to home buyers. However, the manner in which you hold title to your real property has serious legal and tax consequences, and these professionals are not qualified to give legal or tax advice.

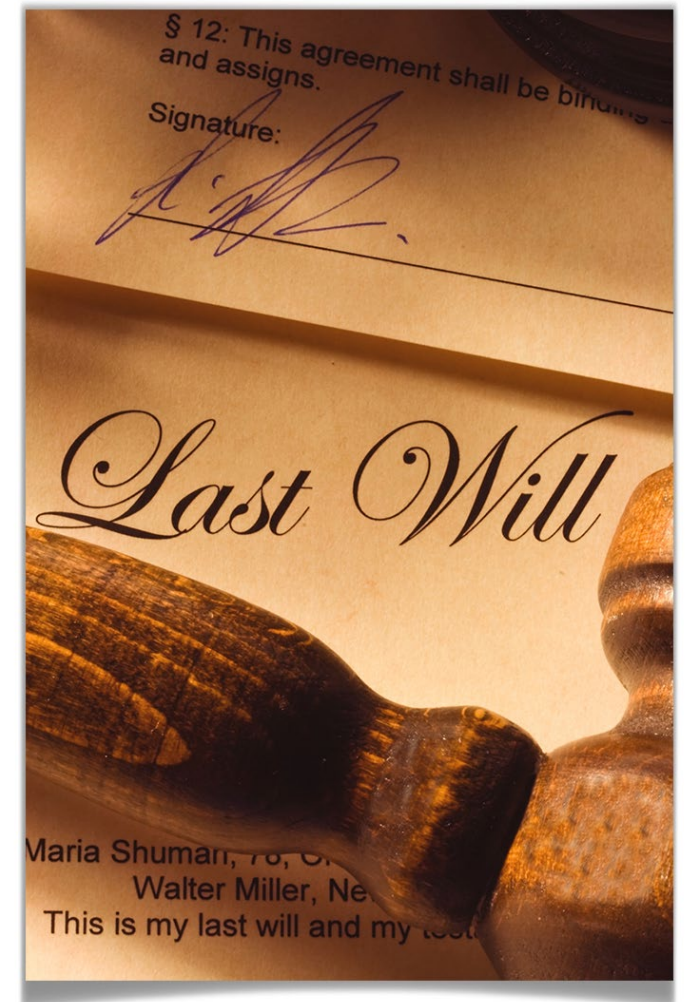
Upon an owner's incapacity or death, titling has many important ramifications. Depending on how you hold title, answers to these questions differ dramatically: i) who will have legal authority to control the property? ii) who will become the legal owner? iii) what is the process for refinancing, selling or transferring the property? iv) will court intervention be required?

v) how long will it take to transfer the property to the rightful new owner? and vi) how much will all this cost?

Every owner's situation is different. The purpose of this brochure is to give you a general understanding of the common titling alternatives and the pros and cons of each.

It is not an adequate substitute for obtaining specific, independent legal and tax advice. An experienced estate planning ("trusts & estates") attorney is the best professional to provide comprehensive advice and assistance.

*\*Titling for a sole owner is not covered in this brochure. For an individual, holding title in a Living Trust is typically optimal.*



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# Revocable Living Trust



## PROS

- On death, probate (expensive, inconvenient, court proceeding) is avoided.
- A Will substitute – distributes to loved ones privately, efficiently and precisely as you wish.
- If incapacitated, your pre-designated successor trustee (i.e. Trust manager) has legal authority to manage, refinance, sell assets - without a Conservatorship (court proceeding).
- Can provide creditor protection of Trust assets for children and/or other loved ones.
- Many valuable estate planning benefits that are unavailable with only a simple Will.

## CONS

- Investment in attorneys' fees to establish a Trust is modestly larger than that of a simple Will.
- Minor inconvenience to "fund" (transfer title of your assets into) a Trust.

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



# *Community Property*

*(in CA, only available if you're married  
or registered domestic partners)*



## **PROS**

- Probate may be avoided on the death of the first spouse.
- Investment in attorneys' fees modestly smaller to establish a Will vs. a Revocable Living Trust.

## **CONS**

- Probate required on the surviving spouse's death.
- Upon incapacity, no control by spouse (without a Power of Attorney or a Conservatorship).
- Without a Trust, no control over how or when a deceased spouse's interest goes to loved ones.

## *Community Property With Right of Survivorship*



Pros & Cons are the same as Community Property (see “Community Property” section on prior panel), except that this form offers the advantage of definitively avoiding a 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*



## **PROS**

- Probate is 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 owns the interest of the deceased co-owner.
- Investment in attorneys' fees modestly smaller to establish a Will (if a co-owner chooses to make one to direct disposition of other assets on death) vs. a Revocable Living Trust.

## **CONS**

- Probate is required on the death of the last co-owner.
- Each co-owner must own an equal fractional share of the property.
- Upon incapacity of a co-owner, the other co-owners cannot manage, refinance and/or sell the property (without Power of Attorney or a Conservatorship).
- No creditor protection available to loved ones who survive the deceased co-owner.
- No control over how or when the interest of a deceased co-owner is distributed – by R.O.S., the surviving co-owners will automatically own deceased co-owner's interest.

# *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. an LLC 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 choose to hold title to your property, your titling decision should be integrated with your estate plan. An experienced estate planning attorney should be able to provide advice and assistance with both your real estate titling concerns and your broader estate planning needs.

The author of this brochure is Robert J. Silverman, a California estate planning attorney who has been practicing for more than 20 years and has extensive experience in the field of real estate. Mr. Silverman offers a brief, free phone appointment\* regarding estate planning and alternative real estate titling methods. Upon request, Mr. Silverman will also send you a complimentary "Estate Planning Primer".

*\*No attorney-client relationship will be formed between Mr. Silverman and a prospective client (e.g. a participant in an introductory call) unless a written fee agreement is executed by both parties.*



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