

# A COMPARISON *to taking title in Arizona*

COMMUNITY PROPERTY	JOINT TENANCY	TENANCY IN COMMON	COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP	TITLE HOLDING TRUST
<b>PARTIES</b> Only husband & Wife.	<b>PARTIES</b> Any number of persons (can be husband & wife.)	<b>PARTIES</b> Any number of persons (can be husband & wife.)	<b>PARTIES</b> Only husband & wife.	<b>PARTIES</b> Individuals, groups of person, partnerships or corporations, a living trust.
<b>DIVISION</b> Ownership & managerial interests are equal.	<b>DIVISION</b> Ownership interests must be equal.	<b>DIVISION</b> Ownership can be divided into any number of interests equal or unequal.	<b>DIVISION</b> Ownership interests must be equal.	<b>DIVISION</b> Ownership is a personal property interest & can be divided into any number of interests.
<b>TITLE</b> Title is in the "community." Each interest is separate but management is unified.	<b>TITLE</b> Sale by joint, tenant serves joint tenancy	<b>TITLE</b> Each co-owner has a separate legal title to his/her undivided interests.	<b>TITLE</b> Title is in the "community." Each interest in separate but management is unified.	<b>TITLE</b> Legal and equitable title is held by the trustee.
<b>POSSESSION</b> Both co-owners have equal possession.	<b>POSSESSION</b> Equal right of possession.	<b>POSSESSION</b> Equal right of possession.	<b>POSSESSION</b> Equal right of possession.	<b>POSSESSION</b> Right of possession as specified in the trust provisions.
<b>CONVEYANCE</b> Personal property (except "necessaries") may be conveyed for valuable consideration without consent of other spouse; real property requires written consent of other spouse & separate interest cannot be conveyed except upon death.	<b>CONVEYANCE</b> Conveyance by one co-owner without the others breaks the joint tenancy.	<b>CONVEYANCE</b> Each co-owner's interest may be conveyed separately by its owner.	<b>CONVEYANCE</b> Purchaser can only acquire whole title of community.	<b>CONVEYANCE</b> Designated parties within the trust agreement authorize the trustee to convey property. Also a beneficiary's interest in the trust may be transferred.
<b>PURCHASER'S STATUS</b> Purchaser can only acquire whole title of community; cannot acquire a part of it.	<b>PURCHASER'S STATUS</b> Purchaser will become a tenant in common with the other co-owners in the property.	<b>PURCHASER'S STATUS</b> Purchaser will become a tenant in common with the other co-owners in the property.	<b>PURCHASER'S STATUS</b> Purchaser can only acquire whole title of community.	<b>PURCHASER'S STATUS</b> A purchaser may obtain a beneficiaries interest by assignment or may obtain legal & equitable trust from the trust.
<b>DEATH</b> On co-owner's death, 1/2 belongs to survivor in severalty, 1/2 goes by will to descendants devisee or by succession to survivor.	<b>DEATH</b> On co-owner's death his/her interest ends & cannot be disposed of by will. Survivor owns the property by survivorship. .	<b>DEATH</b> On co-owner's death his/her interest passes by will to devisee or heirs. No survivorship rights.	<b>DEATH</b> On co-owners death his interest ends and cannot be disposed of by will. Estate passes to survivor outside of probate.	<b>DEATH</b> Successor beneficiaries may be named in the trust agreement eliminating the need for probate.
<b>SUCCESSOR'S STATUS</b> If passing by will, tenancy in common between devisee & survivor results.	<b>SUCCESSOR'S STATUS</b> Last survivor owns property.	<b>SUCCESSOR'S STATUS</b> Devisee or heirs become tenants in common.	<b>SUCCESSOR'S STATUS</b> Last survivor owns property.	<b>SUCCESSOR'S STATUS</b> Defined by the trust agreement, generally the successor becomes the beneficiary & the trust continues.
<b>CREDITOR'S RIGHTS</b> Co-owners interest, cannot be sold at execution sale to satisfy creditors.	<b>CREDITOR'S RIGHTS</b> Co-owner's interest may be sold on executive sale to satisfy creditor. Joint tenancy is broken.. Creditor becomes a tenant in common.	<b>CREDITOR'S RIGHTS</b> Co-owner's interest may be sold on executive sale to satisfy higher creditor. Creditor becomes a tenant in common.	<b>CREDITOR'S RIGHTS</b> Co-owner's interest cannot be seized and sold separately. The whole property may be sold at execution sale to satisfy creditors.	<b>CREDITOR'S RIGHTS</b> Creditor may seek an order for execution sale of the beneficial interest or may seek an order that the trust estate be liquidated & the proceeds distributed.
<b>PRESUMPTION</b> Strong presumption that property acquired by husband & wife in community.	<b>PRESUMPTION</b> Must be expressly stated.	<b>PRESUMPTION</b> Favored in doubtful cases except husband & wife case.	<b>PRESUMPTION</b> Must be expressly stated in writing and accepted. Court will not presume joint tenancy. Both halves of community property are entitled to "stepped up" tax bases as of date of death of either spouse.	<b>PRESUMPTION</b> A trust is expressly created by an executed trust agreement.



# COMMON WAYS *to take title in Arizona*

## **ARIZONA IS A COMMUNITY PROPERTY STATE.**

**THERE IS A STATUTORY PRESUMPTION THAT ALL PROPERTY ACQUIRED BY HUSBAND AND WIFE IS COMMUNITY PROPERTY.**

**COMMUNITY PROPERTY:** Community property is a method of co-ownership for married persons only. Upon the death of one of the spouses, the deceased spouse's interest will pass by either a will or intestate succession.

**COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP:** A community property with right of survivorship estate can be held by a husband and wife when created by express language in the vesting document. Upon the death of a spouse, the estate is vested in the surviving spouse and an Affidavit Terminating Right of Survivorship, together with a certified copy of the death certificate is recorded.

**CORPORATION:** Title may be taken in the name of a corporation provided that the corporation is duly formed and in good standing in the state of its incorporation.

**GENERAL PARTNERSHIP:** Title may be taken in the name of a Partnership provided that the Partnership is duly formed in accordance with state laws. A certificate of Partnership must be recorded in Arizona.

**JOINT TENANCY WITH RIGHT OF SURVIVORSHIP:** Joint tenancy is a method of co-ownership that gives title to the real property to the last survivor. Title to real property can be acquired by two or more individuals. If a married couple acquires title as joint tenants with right of survivorship, they must specifically accept the joint tenancy to avoid the presumption of community property.

**LIMITED LIABILITY COMPANY:** A limited company formed by two or more persons under the law of Arizona or another state. A limited liability company operates similar to a partnership with protection which is similar to a corporation. An Arizona limited liability company must be filed with the State of Arizona.

**LIMITED PARTNERSHIP:** A partnership is formed by two or more persons under the laws of Arizona or another state and having one or more limited partners. A certificate of limited partnership must be filed in the office of the Secretary of State.

**SOLE AND SEPARATE:** Real property owned by a spouse before marriage or any acquired after marriage by gift, devise, descent, or specific intent. If a married person acquires title as sole and separate property, his or her spouse must execute a disclaimer deed.

**TENANCY IN COMMON:** A method or co-ownership when parties do not have survivorship rights and each owns a specific undivided interest in the entire title. Each co-owner has a separate title to his/her interest, and can transfer his/her interest without the other co-owners.

This document is intended for information purposes only. Each particular method of taking title has certain legal and tax consequences, thus you are encouraged to obtain advice from your Attorney and/or Certified Public Accountant to determine which way is best for you.



TITLE