

What is Escrow?

Buying or selling a home is the largest monetary transaction most of us experience in our personal lives. Buying or selling a home or land usually involves the transfer of a large sum of money. As a buyer or a seller, you want to make sure that all the conditions of sale have been met before property and money exchange hands. Through the years, custom has dictated that money and all related documents be transferred through a neutral third party. This process is called *escrow*.

In Northern California, escrows are processed by escrow officers. Most of these are employed by title companies. Escrow officers are people who have years of hands-on experience in handling all the type of documents and large sums of money involved in transferring real property.

The escrow officer serves as the neutral "stake holder" and the communication link to all parties in the transaction. The escrow officer holds all documents and money until all conditions of the sale are completed, at which time she will impartially carry out the written instructions given by the principals in the transaction.

Concurrent Co-Ownership Interests

The comparison below is provided for information only. It should not be used to determine how you hold title. We strongly recommend that you seek professional counsel from an attorney and/or CPA to determine the legal and tax consequences of how title is vested.

	Community Property	Community Property w/ Right of Survivorship	Joint Tenancy	Tenancy in Common	Partnerships	Trust Arrangements
Parties	Husband and Wife or domestic partners.	Husband and wife or domestic partners. Both should sign the acquisition Deed to accept this special form of vesting title.	Any number of persons. Can be husband and wife alone or with others- no corporations - no partnerships.	Only partners (any number).	Individuals, groups of persons, partnerships or corporations, a living trust.	Only husband and wife.
Division of Interest	Ownership and management of property as equal.	Ownership and management of property as equal.	Interests are equal and undivided. each person controls his or her own interest.	Ownership can be divided into any number or interests equal or unequal.	Each partner's share is personal property in partnership entity.	Ownership is a personal property interest and can be divided into any number of interests.
Title	Title is in the community. Each interest is separate but management is unified.	Title is in the Community subject to special survivorship right.	Ownerships are joint. Sale by one owner tenancy as to others.	Each co-owner has a separate legal life to their undivided interest.	Ownership is by partnership entity only.	Title is held by trustee(s) pursuant to the trust agreement.
Possession	Both co-owners have	Both co-owners have	Equal right of possession.	Equal right of possession.	Possession by	Depends on provisions in

	equal management and control.	equal management and control.			partnership by managing partner(s).	trust agreement.
Conveyance	Requires WRITTEN consent of other spouse or actual conveyance by deed. Separate interest is divisible by will. Purchaser can only acquire whole title of community; can not acquire part of it.	Requires both spouses to join for valid conveyance, except for attorney's fees. However, the estate may be served as in joint tenancy by one spouse conveying to him or her.	Conveyance by one owner severs the joint tenancy, but only as to that owner's interest.	Each co-owner's interest may be conveyed separately by its owner.	Conveyance MUST be by designated general partners. All limited partners need to consent if sale is 100% of assets.	Designated parties in the trust instrument authorize the trustee to convey property. Also, a beneficiary's interest may be sold separately (as personal property) unless restricted.
Purchaser's Status	Purchaser can only acquire 100% of title of community. Both spouses must consent or convey. Cannot be a co-owner with others.	Purchaser can only acquire 100% of title of community. Both spouses must consent or convey. Cannot be a co-owner with others.	Purchaser will become a tenant in common with the other co-owners in the property as to the purchaser's interest. Other owners may remain joint.	Purchaser will become a tenant in common with the other co-owners in the property.	Purchaser acquires interest that partnership owned.	Purchaser acquires interest held by the trustee. Beneficiary's interest may be conveyed separately (as personal property) unless restricted.
Effect of Death	On the death of the first spouse, half interest belongs to the surviving spouse. Other half interest is divisible by will, or passes by succession under Probate Statutes.	On the death of the first spouse, the undivided half interest passes to the surviving spouse, just the same as joint tenancy. No separate interest is divisible by will.	Upon each owner's death, their interest passes to the remaining survivors by operation of law. Such interests are NOT divisible by will.	Each owner's interest is divisible by will or passes by succession under Probate Statutes. No right of survivorship.	Partner's share in partnership is divisible by will or passes by succession under Probate Statutes. May cause dissolution of partnership dependant on items of partnership agreement.	Depends on terms of trust instrument. Death of trustor may terminate or convert trust to other arrangements. Successor beneficiaries may be named in the trust instrument.
Successor's Status	If first spouse's interest is devised by will or persons by succession, remaining spouse and devisees or heirs hold title as tenants in common.	Due to survivorship right, the surviving spouse owns 100% of the title.	Unless joint tenancy is broken, last surviving joint tenant owns entire property interest, which is not divisible by will.	Heirs or devisees become tenants in common with other owners.	Heirs or devisees have rights in partnership interest, but not in specific property.	Depends on terms of trust instrument. Trust may terminate or other trust arrangements may be created.

Creditor's Rights	Property of the community is liable for the debts of either spouse made before or during marriage. Entire property may be sold at execution sale to satisfy debt of either spouse.	Property of the community is liable for the debts of either spouse made before or during marriage. Entire property may be sold at execution sale to satisfy debt of either spouse.	Each owner's interest is subject to execution to satisfy debt. Joint tenancy is broken. Buyer at sale (usually creditor) becomes tenant in common with other owners.	Each owner's interest is subject to execution sale. Buyer at sale (usually creditor) becomes tenant in common with other owners.	Partnership real property only subject to execution sale by partnership creditor. If debt of individual partner, only that partner's share (personal property) is subject to execution sale.	Creditor needs to obtain a final court order for any execution sale of the beneficial interest, or an order to have specific trust property to be sold to satisfy the debt.
Presumptions	Strong presumption that any property acquired by either husband or wife during marriage is community property.	Property is specifically stated in the deed to be community property with right of survivorship.	MUST by expressly stated that property is acquired as joint tenancy	When conveyance is unclear, tenancy in common is presumed, unless community property presumption applies.	Should be clear from conveyance that grantees have partnership status. If not, could be found to be tenants in common.	Trust arrangement is ONLY created by written instrument. Conveyance MUST be to trustee of the trust. The trust itself is NOT a legal entity capable of holding title.

Note: Additional methods of holding title include sole ownership and a married person as his or her sole and separate property.