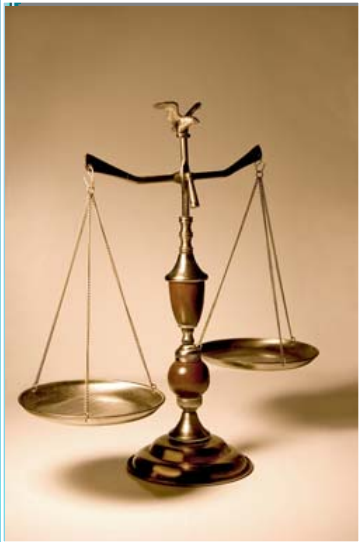


# California Real Estate Law



## Lesson 5: Co-ownership of Real Property

# Introduction

This lesson will discuss:

- forms of co-ownership
- tenancy in common
- joint tenancy
- community property
- ownership of business entities

# Forms of Co-ownership

Ownership by one person:

- in severalty
- ownership “severed” from all other people

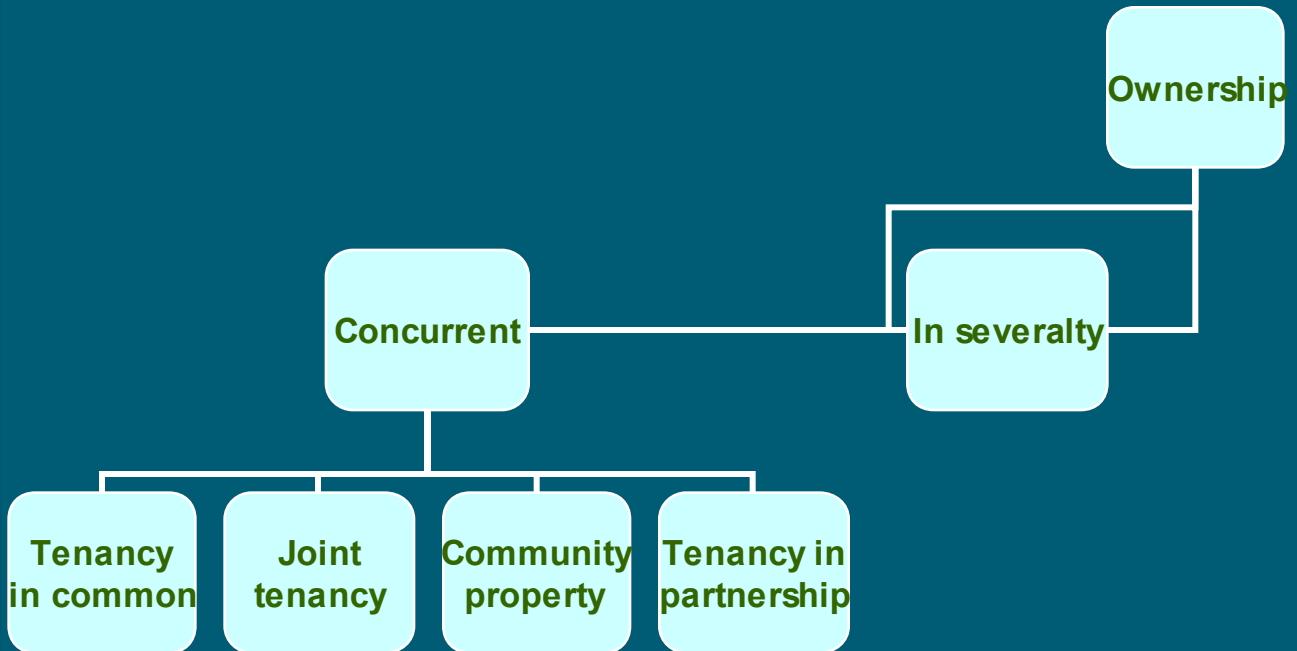
Title isn't shared in any way.

# Forms of Co-ownership

Co-ownership by two or more people:

- concurrent ownership
- more complicated than ownership in severalty

# Forms of Co-ownership



# Tenancy in Common

## Tenancy in common (TIC):

- default form of co-ownership

If grantor conveys property to 2 or more unmarried people and no form of co-ownership is specified:

- grantees take title as tenants in common

# Tenancy in Common

## Undivided interests

Tenancy in common is a flexible form of co-ownership:

- ownership interests may be equal or vary in size

Example: one person owns 90% interest and three others share remaining 10%

# Tenancy in Common

## Undivided interests

No matter how small an ownership interest is, it's an undivided interest—the tenants in common have unity of possession.

Unity of possession: each tenant has right to use the entire property and no co-tenant can keep other owners out



# Tenancy in Common

## Undivided interests

Example: person with 10% has just as much right to use property as person with 90% interest

- Exception: tenants in common may agree in writing to grant one tenant exclusive right of possession

# Tenancy in Common

## Rights and duties

Rules cover:

- contributions for expenses and improvements
- contribution of labor
- profit from property
- waste

# Rights and Duties

## Contributions for expenses

Tenants in common share property's expenses in proportion to their percentage of ownership.

- unless agreement to contrary

# Rights and Duties

## Contributions for expenses

If one tenant pays more than his share, he is entitled to reimbursement from the other co-tenants.

- known as right to contribution

# Rights and Duties

## Contributions for expenses

Right to contribution:

- applies automatically to all necessary expenses
- applies to optional improvements only if other co-tenants approve

If tenant refuses to contribute to optional improvement, she can't share in any increase in market value.

# Rights and Duties

## Contribution of labor

Tenants in common may agree to allow a co-owner to contribute labor instead of money.

# Rights and Duties

## Profit

Every co-tenant has right to profit from his share of the property.

Entitled to share of:

- rental income
- natural resources

# Rights and Duties

## Waste

Waste: physical damage to property that reduces its value

Co-tenants may not commit waste.

- Example: one co-tenant removes all timber from property



# Rights and Duties

## Transfer and encumbrance

Tenant in common:

- may freely mortgage, sell, gift, transfer interest
- doesn't need other co-owners' consent

Transfer can be voluntary or involuntary.

Example: one bankrupt owner sells interest

- creditor may become co-tenant

# Rights and Duties

## Transfer and encumbrance

To avoid unwanted co-tenants, TIC agreement may contain right of first refusal.

Right of first refusal: provision in agreement that requires any owner wanting to sell share, to first offer to other co-tenants

# Tenancy in Common

## Terminating a tenancy in common

Two ways to terminate tenancy in common:

- voluntary termination
- judicial termination

# Terminating a Tenancy in Common

## Voluntary termination

Voluntary partition: co-tenants agree to physical division by signing and recording necessary deeds

- each former co-tenant then owns a piece of property in severalty

Example: Two brothers own 40 acres as tenants in common. They voluntarily partition property into two separately owned 20-acre parcels.

# Terminating a Tenancy in Common

## Voluntary termination

Voluntary termination without partition:

- tenancy in common agreement changed to other form of co-ownership

Example: Two brothers change tenancy in common to joint tenancy, using written agreement.

# Terminating a Tenancy in Common

## Voluntary termination

Judicial termination:

- one tenant refuses voluntary termination
- other tenant(s) file partition action in court

Court may:

- physically divide land according to percentage ownership
- order land sold and proceeds shared according to percentage ownership

# Summary

## Tenancy in common

- Undivided interest
- Unity of possession
- Right to contribution
- Waste
- Right of first refusal
- Partition