

survivorship". Below is a brief summary of the characteristics of these forms of ownership.

- **Joint Tenants:** Couples that own as joint tenants have a "right of survivorship", meaning that if one owner dies, the other automatically becomes owner of the deceased owner's share. The passage of the deceased owner's interest to the other owner does not require a will or other estate planning document, and does not involve a probate court proceeding. For this reason, holding title as joint tenants provides the least expensive, fastest, and most definitive manner of passing property between co-owners upon death. But joint tenants must hold property in equal shares which means that if the couple wants an unequal allocation of rights or responsibilities either during their relationship, after a breakup, or both, they will need a co-ownership agreement.
- **Tenants In Common:** Couples that own as tenants in common do not have the right of survivorship, meaning that upon death each owner's interest passes to whoever the deceased owner left it to in a will or, if there is no will, to the deceased owner's legal heir(s). The legal heir **will not** be the other partner unless the partners are state-registered, so it is important that unregistered unmarried couples who co-own property as tenants in common and who wish to have the property pass to the surviving partner make sure that each partner has a will leaving the property to the other. When a tenant in common owner dies, with or without a will, and regardless of state-registration, his/her interest must go through a probate court procedure which always involves some delay and cost, and can provide an opportunity for relatives to contest a will or argue about succession.
- **Living Trust:** Unmarried couples can form a living trust to hold title to their property. The principal benefits of this form of ownership are (i) the avoidance of probate court procedures and associated costs and delays, and (ii) the ability to make very specific and nuanced plans for the disposition of property following death. But in order to own property in a living trust, it is necessary to create the trust, and that involves cost.
- **Community Property With Survivorship:** Community property ownership will only be available for state-registered domestic partners, and only after January 1, 2005. California recognizes two types of community property ownership: (i) with a right of survivorship ("CPRS") and (ii) without a right of survivorship ("CP"). CPRS is similar to joint tenancy in that a deceased partner's share immediately passes to the surviving partner without probate costs or delays. But CPRS differs from joint tenancy in two important respects. First, CPRS may provide more advantageous tax treatment than joint tenancy for the surviving partner, although it is still too early to know definitively. Second, in a breakup, CPRS will be subject to a very well-developed body of domestic relations law which might make dispute resolution faster and less expensive than it would be if the property were held in joint tenancy. Couples wishing to hold title as CPRS must specifically so state on the deed. If the deed says community property but does not mention the right of survivorship, the presumption will be that the property is held as CP rather than CPRS.
- **Community Property Without Survivorship:** The difference between CP and CPRS is how the property passes after the death of a partner. With CP, each partner may will up to half of his/her community property share to someone other than the other partner. Any portion not willed, or the entire property if there was no will, passes to the surviving partner. Unlike CPRS property, all CP property must go through a probate court procedure regardless of whether the deceased partner had a will, and regardless of whether the property is passing to the surviving partner. For this reason, CPRS is a better option except where one wants a portion of the property to pass to someone other than his/her partner. Also, keep in mind that community property ownership will only be available for state-registered domestic partners, and only after January 1, 2005.

What happens when the deed does not state how title is held?

