

An Overview of Joint Property Ownership

A general comparison of various ways people can legally hold property with others. Note, property law varies from state to state resulting in nuances the following chart may not accurately reflect.

	Joint Tenants with Rights of Survivorship	Tenancy by the Entirety	Community (or Marital ¹) Property	Tenants in Common
Owner's Interest in Property	<ul style="list-style-type: none"> Undivided, fractional interest in property All owners' interests are equal amounts No limit on number of owners or who can be owners 	<ul style="list-style-type: none"> Owners must be spouses Both spouses own entire property as a "marital unit" Exists in only certain states and can apply to only certain types of property (for example, real property) 	<ul style="list-style-type: none"> Owners must be spouses Applies to property acquired by either spouse during marriage Regardless of title, each spouse owns an undivided, one-half interest in the property (although spouses' ownership interests can be modified by property agreement) Exists in only certain states and laws can vary by state² 	<ul style="list-style-type: none"> Undivided, fractional interest in property Owners' fractional interests can be equal or unequal amounts No limit on number of owners or who can be owners
Income Taxation	Generally, owners are allocated the income tax attributes pro rata based on number of owners	Generally, spouses are each allocated one half of income tax attributes	Generally, spouses are each allocated one half of income tax attributes	Generally, owners are allocated the income tax attributes pro rata based on percentages of ownership interests
Lifetime Transfers	Fractional interest can be transferred, but doing so converts property ownership to tenants in common	Fractional interest cannot be transferred (or encumbered) without consent of both spouses	Pursuant to state law, each spouse can act alone with respect to certain transfers and both spouses need to act together for other transfers	Fractional interest can be transferred (unless subject to contractual restrictions)

¹ The term "marital property" in this article refers to assets acquired during a marriage as opposed to assets subject to division pursuant to a divorce.

² There are 11 states that have community or marital property laws: Alaska (by election); Arizona; California; Idaho; Louisiana; Nevada; New Mexico; Tennessee (by election); Texas; Washington; and Wisconsin.

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Estate Tax Inclusion	<ul style="list-style-type: none"> • Non-Spouses: Fair market value of entire property unless decedent's estate can prove surviving owner(s) contributed to acquisition of property, in which case pro rata based on contributions • Spouses (who are U.S. citizens): Half of fair market value of property at first spouse's death; fair market value of entire property at surviving spouse's death 	For spouses who are U.S. citizens, half of fair market value of property at first spouse's death, and fair market value of entire property at surviving spouse's death	For spouses who are U.S. citizens, half of fair market value of property at first spouse's death, and fair market value of entire property at surviving spouse's death	Fair market value of owner's fractional interest
Transfer Upon Death	Deceased owner's interest transfers equally to survivor(s) by operation of law	Deceased spouse's interest transfers to surviving spouse by operation of law	Deceased spouse's one-half interest transfers pursuant to deceased spouse's estate plan	Deceased owner's fractional interest transfers pursuant to estate plan (unless subject to contractual restrictions)
Basis Adjustment Upon Death (for property that is <u>not</u> income in respect of a decedent)	Basis of deceased owner's fractional interest is adjusted to fair market value as of date of death to the extent of estate tax inclusion	<ul style="list-style-type: none"> • Upon first spouse's death, basis of deceased spouse's interest is adjusted to fair market value as of date of death • Upon survivor's death, basis of entire property is adjusted to fair market value as of date of death 	<ul style="list-style-type: none"> • Upon first spouse's death, entire property adjusted to fair market value as of date of death • Upon survivor's death, entire property is again adjusted to fair market value as of date of death (often referred to as "double step up") 	Basis of deceased owner's fractional interest is adjusted to fair market value as of date of death

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