

Guide to Tenancy for Oahu

Important Note: This information is for reference only. Please be sure to consult with a competent financial planner or estate attorney before making any decisions.

	Tenancy in Severalty	Tenancy in Common	Joint Tenancy	Tenancy by Entireties
<i>Definition</i>	Property held by one person, severed from all others.	Property held by 2 or more persons, with no right of survivorship.	Property held by 2 or more individuals (not corporation), with right of survivorship.	Property held by husband and wife or reciprocal beneficiaries with right of survivorship.
<i>Creation</i>	Any transfer to one person.	By express act; also by failure to express the tenancy.	Express intention plus 4 unities of time, title, interest and possession (with statutory exception).	Express intention, only husband and wife or reciprocal beneficiaries. Divorce or dissolution of the reciprocal beneficiary relationship automatically results in tenancy in common.
<i>Possession</i>	Total	Equal right of possession.	Equal right of possession.	Equal right of possession.
<i>Title</i>	One title in one person.	Each co-owner has a separate legal title to his undivided interest; will be equal interests unless expressly made unequal.	One title to the whole property since each tenant is theoretically deemed owner of the whole; must be equal undivided interests.	One title in the marital unit.
<i>Conveyance</i>	No restrictions (check release of marital rights if any)	Each co-owner's interest may be conveyed separately by its owner; purchaser	Conveyance of 1 co-owner's interest breaks his tenancy; purchaser becomes tenant in common.	Cannot convey without consent of spouse or other owner.

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		becomes tenant in common.		
<i>Effect of Death</i>	Entire property subject to probate & included in gross estate for federal & state death taxes	Decedent's fractional interest subject to probate & included in gross estate for federal & state death taxes. The property passes by will to devisees or heirs, who take as tenants in common. No survivorship rights.	No probate & can't be disposed of by will; property automatically belongs to surviving co-tenants (last one holds in severalty). Entire property included in decedent's gross estate for federal estate tax purposes, minus % attributable to survivor's contribution.	Right of survivorship so no probate. Same death taxes as joint tenancy.
<i>Creditor's Right</i>	Subject to creditor claims.	Co-owner's fractional interest may be sold to satisfy his creditor who then becomes tenant in common.	Joint tenant's interest also subject to execution sale, joint tenancy is broken & purchaser becomes tenant in common. Creditor gets nothing if debtor tenant dies before sale.	Only a creditor of both spouses can execute on property.
<i>Presumed by Law</i>	None.	Favored in doubtful cases; presumed to be equal interests.	Not favored so must be expressly stated.	Must be expressly stated.