

**FIGURE 5.3**

## Types of Tenancy

	TENANCY IN SEVERALTY	TENANCY IN COMMON	JOINT TENANCY	TENANCY BY ENTIRETIES
<b>DEFINITION</b>	Property held by one person, severed from all others	Property held by two or more persons, with no right of survivorship.	Property held by two or more (not corporation) with right of survivorship.	Property held by husband and wife with right of survivorship.
<b>CREATION</b>	Any transfer to one person.	By express act; also by failure to express the tenancy.	Express intention plus four unities of time, title, interest and possession (with statutory exceptions).	Created by deed to husband and wife, without reference to survivorship rights. Divorce automatically results in tenancy in common.
<b>POSSESSION</b>	Total.	Equal right of possession.	Equal right of possession.	Equal right of possession.
<b>TITLE</b>	One title in one person.	Equal 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 whole; must be equal undivided interests.	One title in the marital unit.
<b>CONVEYANCE</b>	No restrictions (check release of marital rights, if any).	Each co-owner's interest may be conveyed separately by its owner; purchaser becomes tenant in common.	Conveyance of one co-owner's interest breaks his tenancy; purchaser becomes tenant in common.	Cannot convey without consent of spouse.
<b>EFFECT OF DEATH</b>	Entire property subject to probate and included in gross estate for federal and state death taxes.	Decedant's fractional interest subject to probate and included in gross estate for federal and state death taxes. The property passes by will to devisees or heirs, who take as tenants in common. No survivorship rights.	No probate and can't be disposed of by will; property automatically belongs to surviving co-tenants (last one holds in severalty). Entire property included in decedant's gross estate for federal estate tax purposes, minus percent attributable to survivor's contribution.	Right of survivorship so no probate. Same death taxes as joint tenancy.
<b>CREDITOR'S RIGHTS</b>	Subject to creditor claims.	Co-owner's fractional interest may be sold to satisfy his creditor, who becomes tenant in common.	Joint tenant's interest also subject to execution sale, joint tenancy is broken and creditor becomes tenant in common. Creditor gets nothing if debtor tenant dies before sale.	Only a creditor of both spouses can execute on property.
<b>PRESUMPTION</b>	None.	Favored in doubtful cases; presumed to be equal interests.	Not favored, so must be expressly stated.	Automatically created when names of both spouses appear on the deed.