



Understanding Joint Tenants vs. Community Property

Holding title as “Joint Tenants” or as “Community Property” involves a multitude of issues to be dealt with. Joint Tenants can be two or more persons, who may or may not be married or domestic partners, in equal interests, subject to the right of survivorship in the surviving joint tenant(s), while Community property can only be owned together by married persons or by domestic partners.

Joint Tenancy:

A form of vesting title to property owned by two or more persons, who may or may not be married or domestic partners, in equal interests, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy estate. When a joint tenant dies, title to the property is automatically conveyed by operation of law to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will. For example: Bruce Buyer, a married man and George Buyer, a single man, as joint tenants.

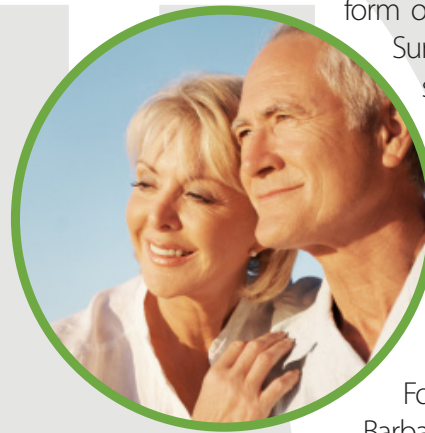
Note: If a married person enters into a joint tenancy that does not include their spouse, the title company insuring title may require the spouse of the married man or woman acquiring title to specifically consent to the joint tenancy. The same rules will apply for same sex married couples and domestic partners.

Community Property

Community Property can be held with or without “Right of Survivorship”. A form of vesting title to property owned together by married persons or by domestic partners. Community property is distinguished from separate property,

which is property acquired before marriage or before a domestic partnership by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse or domestic partner.

In California, real property conveyed to a married person, or to a domestic partner is presumed to be community property, unless otherwise stated (i.e. property acquired as separate property by gift, bequest or agreement). Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. If this



form of title is filed with “Right of Survivorship”, it adds the benefit similar to title held in joint tenancy. There may be tax benefits for holding title in this manner. On the death of an owner, the decedent’s interest ends and the survivor owns all interests in the property. For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, spouses, as community property with right of survivorship. Another example for same sex couples: Sally Smith and Jane Smith, registered domestic partners, as community property with right of survivorship.

Remember:

How title is vested has important legal consequences and tax consequences. The tax consequences may be different for same sex legally related couples. You may wish to consult an attorney or tax advisor to determine the most advantageous form of ownership for your particular situation.

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Do you know?

Under current law, California recognizes same sex relationships that are legally performed or entered into in other states and other countries. This recognition includes same sex marriages and other types of legal unions that are similar to registered domestic partnership status. If same sex couples are married in another jurisdiction caution should be used in the use of the term “marriage.” Under California law the term “marriage” is currently prohibited for same sex marriages performed on or after November 5, 2008. (See, Family Code § 308 c).

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