CHICAGO LIBRARY

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 any number of persons while Community property can ONLY be husband and wife.

A Joint Tenancy property is defined in the Civil Code as follows: "*A joint interest is owned by two or more persons in equal shares".* A chief characteristic of Joint Tenancy property is the right of survivorship. When a joint tenant dies, title to the property immediately vests in the surviving joint tenant(s). As a consequence, Joint Tenancy property is not subject to disposition by will.

"Community Property" can be held with or without "Right of Survivorship". The California Civil code defines "Community Property" as *Property acquired by husband and wife only."* Real property conveyed to a married man or woman is presumed to be "Community Property", unless otherwise specified. When expressly declared in the transfer document to be "Community Property with the Right of Survivorship", shall, upon the death of one of the spouses, pass to the survivor, without administration, subject to the same procedures as a Joint Tenancy property. Without the "Right of Survivorship", the one-half ownership will be subject to administration in the estate.

As for the tax consequences, it has been a little more blurred as of late but basically the issue is as follows:

If property is joint as joint tenants, the tax basis of the deceased spouse's half interest would be "stepped-up" to the fair market value at the time of his/her death. The tax basis of the surviving spouse's half interest would remain at its original basis.

For example: Husband and wife purchased their house for $100,000 with each spouse's tax basis at $50,000. At the date of Husband's death, the property's fair market value was $200,000. Since they held the property in joint tenancy, Wife automatically received Husband's half interest upon his death.

Husband's half interest tax basis (originally $50,000) is "stepped-up" to the fair market value at his death (i.e. $100,000). Wife then has property worth $200,000 with a tax basis of $150,000 (her original $50,000 basis plus her deceased husband's stepped up basis of $100,000). If the property were sold for $200,000, there would be $50,000 of taxable gain. If title is taken as community property, however, the entire property receives a "stepped-up" basis to the fair market value at the date of one spouse's death. • For example: Assume the same $100,000 purchase and $200,000 value at date of death and further assume Husband's willed his interest to Wife. Wife's original $50,000 basis gets stepped-up along with Husband's original $50,000 basis to the current $200,000 fair market value. Wife then has property worth $200,000 with a basis of $200,000. If the property were sold for $200,000, there would be no taxable gain.

For more information on Title Vesting, please contact any of your local Chicago Title Branch Offices or visit us online at

www.CTIC.com

CHICAGO TITLE