



California Community Property and Real Estate

California is one of only nine community property states. This gives married couples in California several choices about how to hold title to California real estate. Like anyone else, married couples may hold title as joint tenants with right of survivorship or as tenants in common. But most married couples prefer to hold title as community property.

Advantages of Holding Title as Community Property

Holding property as community property has several advantages. Community property states treat the spouses as a single economic unit. As long as the property is acquired during a valid marriage and the property is not separate property (discussed below), it is treated as owned by both spouses. Both spouses have equal rights to the control and management of the property, and one spouse cannot transfer the property without the consent of the other spouse. This often matches the intent of the spouses.

These benefits are even more favorable if the property is titled as community property with right of survivorship. The right of survivorship means that the property passes automatically to the surviving spouse on the first spouse's death. Because title transfers automatically, there is no need to involve the property in a probate proceeding. This makes community property with right of survivorship a great technique for avoiding California probate of real estate.

Community property also provides opportunities for tax planning that are not available for other form of property. Community property is entitled to a full "step up" in basis on the death of the first spouse. This rule effectively eliminates all appreciation in community property that occurred prior to the first spouse's death. This can save taxes when the property is sold by either the surviving spouse or other family members.

Exception for Separate Property

As mentioned above, all property that a married couple acquires during their marriage is community property unless it is characterized as separate property. Section 770 of the California Family Code creates three specific categories of separate property:

1. All property owned by the person before marriage.
2. All property acquired by the person after marriage by gift, bequest, devise, or descent.
3. The proceeds (rents, issues, and profits) from the property described in the first two categories.

If property fits within any of these categories, it is not community property. The spouse that owns the property may deal with the property without the consent of the other spouse. If real estate qualifies as separate property, a married individual may take title in his or her name alone. The deed should recite that the property belongs to that spouse as separate property.

Converting Separate Property to Community Property

Some spouses may wish to convert property to community property. This can happen when one spouse holds title as separate property and wants to convert it to community property that is jointly owned by both spouses. It can also occur when both spouses hold title as joint tenants with right of survivorship, but prefer to hold title as community property in order to take advantage of the benefits described above.

The best way to convert non-community property to community property is to sign a new deed that transfers the property to both spouses as community property. The deed may also specify that the property is to be held as community property with right of survivorship.

