

How to Transfer California Real Property to Heirs

How real property was owned and its market value are the two key variables that determine the time and cost to transfer a deceased owner's real property.

HUNTINGTON BEACH, CA, UNITED STATES, February 27, 2020 /EINPresswire.com/ -- Two key variables dictate [how to transfer California real property to heirs](#) after the death of the owner. The two variables are: 1) how the decedent owned or took title to the real property and 2) the fair market value of the property on the date of death. The last deed recorded with recorder's office is the final word on how the real property is owned. The deed is available at the recorder's office in the county where the real property is located.

The options for owning are as an individual, as a co-owner, as a trust, as a business entity or as a revocable transfer on death deed. Real property owned by one individual requires assistance from the probate court. The amount of involvement by the probate court depends on the real property's appraised fair market value as of date of death.



Post death transfer of California real property

The final word on the appraised fair market value is determined by an individual with the bewildering title of "probate referee." The probate referee is an Officer of the Court appointed by the California State Controller. The less the appraised value, the less involvement by the court. The break out is less than \$50,000, \$50,000 to \$150,000 and over \$150,000.

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Two key variables dictate how to transfer California real property to heirs after the death of the owner; market value and how the property was owned”

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California law has a shortcut, or expedited probate procedure for real property less than \$50,000 in value known as "Affidavit re Real Property of Small Value." No court hearing is needed. This procedure is primarily available for timeshares, mineral rights, and undeveloped

land away from the coast.

"Succession to Real Property" is available for real property valued at less than \$150,000 but more than \$50,000. This procedure is shorter than formal probate administration as it requires only

one court hearing. The transfer is at the court's discretion based on the evidence introduced at the hearing.

Real property with a market value greater than \$150,000 requires formal probate administration. Probate is the administration under court supervision of a decedent's estate as directed in his or her Will or by the laws of intestacy. Formal [California probate court administration](#) requires at a minimum two court hearings, three court orders and one year to complete.

If there is a surviving co-owner, that owner has the right of survivorship or does not. The right of survivorship automatically transfers the deceased co-owner's interest to the survivor or survivors. This right must have very specific phrases on the deed to exist. The phrases are either "joint tenants" or "community property with the right of survivorship." If either of these phrases is missing or the wrong phrase provided, such as "husband and wife" the deceased owner's interest passes to his or her heirs through the probate court.

Even though the survivorship right is automatic, the public record is not automatically updated. For the survivor to sell or borrow on the real property, an affidavit of death must be submitted to the county recorder by the survivor. If there is only one survivor as is most often the situation, the survivor owns as an individual. On the death of the survivor an action in probate court is required.

For a trust, transfer is by [affidavit death of trustee](#) and deed recorded with the county recorder. The affidavit establishes the successor trustee identified in the trust as the person authorized to act on behalf of the trust. The successor trustee can then sell or transfer the real property to the beneficiaries of the trust by deed.

California's legislature passed a new law for a five-year test of revocable, transfer on death deeds for real property. On death this deed transfers ownership to the heir named on the deed. The law ends on January 1, 2021. Revocable transfer on death deed executed before January 1, 2021 will remain valid after January 1, 2021.

Real property owned by a business entity such as a limited liability company or corporation avoid the probate courts and the recorder's office. Ownership transfer is internal according to the procedures of the business entity.

Two key variables dictate how to change owners of California real property after the death of the owner. The two variables are: 1) how the decedent owned or took title to the real property and 2) the fair market value of the property on the date of death. The options for owning are as an individual, as a co-owner, as a trust, as a business entity or as a revocable transfer on death deed. The less the appraised fair market value, the less involvement by the court.

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