

California Real Estate Community Property Trap by Deed and Record

Joint ownership protects each spouse on death of the first spouse. But California community property laws create adverse consequences in a divorce.

HUNTINGTON BEACH, CA, UNITED STATES, October 27, 2020 /EINPresswire.com/ -- [Deed and Record](#) explains the hazards of adding a spouse as an owner of real property in California. California is a community property state. Community property states have two distinct types of real property for married couples.



Pros and cons of separate real property in California

In community property states real property acquired during a marriage is community and each spouse owns one-half. Inherited real property and real property acquired prior to marriage is separate property. Separate property is owned by one spouse.

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The main reason to add a spouse as owner is to protect the other spouse in the event of death of the owner spouse. The non-owning spouse is added as either a joint tenant or as “community property with the right of survivorship.” Both ownerships avoid probate and protect the surviving spouse.

The risk of joint ownership is divorce. Adding a spouse on title to separate property converts the property into community property. In a divorce community property is

divided equally between the two spouses.

To complicate matters there is a capital gains tax advantage to community property. Federal estate tax law and [California community property](#) law work together for the surviving spouse to receive a full step-up in “basis” on real property on the death of the first spouse. Capital gain tax is computed on the difference between the selling price and the basis of the property.

The best way to protect the other spouse in the event of death while preserving the separate property status is with a living trust. The [separate real property](#) is transferred into the trust. But the capital gains advantage is lost.

A spouse owning separate real property must weigh capital gains, spouse protection and the risk of divorce. A trust protects both spouses in divorce and death, but may have a tax disadvantage and does have upfront costs. Adding a spouse on title to separate property converts the property into community property.

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