

How a Surviving Spouse Avoids Probate of Real Property in California by Deed and Record

For a surviving spouse to avoid probate, the real property must be either owned by a trust or by both spouses with a right of survivorship.

HUNTINGTON BEACH, CA, UNITED STATES, November 5, 2020 /EINPresswire.com/ -- For a [surviving spouse](#) to avoid probate, the real property must be either owned by a trust or by both spouses with a [right of survivorship](#). To have the right of survivorship the surviving spouse's name and specific wording appear on the last transfer deed. [Deed and Record](#) explains in this press release.



The County Recorder maintains database of real property owners

The right of survivorship automatically transfers the deceased spouse's interest to the surviving spouse. The last transfer deed must have very specific phrases for this right to exist. The phrases are either "as joint tenants," "in joint tenancy" or "as community property with the right of

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survivorship.” If either of these phrases is missing or the wrong phrase provided, such as “husband and wife” the spouse's interest passes 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. The affidavit updates the public record maintained by the County Recorder.

If the real property was owned by a trust, transfer is by “affidavit death of trustee” or “affidavit

change of trustee.” Both affidavits establish the successor trustee identified in the trust as the person authorized to act on behalf of the trust. The vast majority of spousal trusts have the surviving spouse as the sole successor trustee. The successor trustee can then refinance or sell the real property.

For a surviving spouse to avoid probate, the real property must be either owned by a trust or by both spouses with a right of survivorship. Right of survivorship requires that the surviving spouse’s name and specific wording appear on the last transfer deed. For both trusts and right of survivorship, an “affidavit of death” puts on the public record the name of the person who can refinance or sell the real property.

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