

How to Own Real Property in California

How California real property is owned determines how it will transfer on death of an owner. Post by Mark W. Bidwell explores the options.

HUNTINGTON BEACH, CA, USA, April 23, 2021 /EINPresswire.com/ -- In the process of purchasing real property in California, the buyer will need to know ["how to own California real property."](#) [How California real property is owned](#) determines how the real property transfers on the death. Options to own are; in name only, as a co-owner, in a trust, or as a business entity.



How to own California real property

The major distinction between these options is, will transfer be in or out of probate court? Probate is a set of California laws that determine who inherits and how. Probate requires a filing in court and an order from the court on who inherits. Probate is time consuming, expensive and a matter of public record.

Real property owned in a person's name only requires transfer to heirs in probate court. Two or more individuals who own in their names only, are called tenants-in-common. A tenant-in-common owner requires transfer in probate court to his or her deceased heirs. Heirs are determined by California law or by will. The surviving co-owner may not be the heir and may have a new co-owner.

Co-owners can avoid probate on the death of the first owner with the magic words "as joint tenants." Joint tenants have the right of survivorship. A surviving joint tenant owner inherits the deceased owner's interest without probate court. If the phrase "as joint tenants" is missing the default is as tenants-in-common and transfer is in probate court.

Another form of joint tenancy ownership in California is ["as community property with the right of survivorship."](#) This right of survivorship is for married couples only. In addition to the right of survivorship, this phrase allows on the death of the first spouse, a full step-up in the basis of the real property to fair market value. Full step-up in basis may provide a reduction in capital gains

tax on the subsequent sale of the real property.

Many states allow the right of survivorship with the phrase "as husband and wife." This is not true in California. In California, the phrase "as husband and wife" does not provide the right of survivorship. The surviving spouse requires a court order from the probate court to inherit.

Even though the right of survivorship is automatic, the public record maintained by the county recorder 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 surviving owner, an action in probate court is required.

Another way to own real property in California is as trustee of a trust. Trusts are similar to wills. A trust states who inherits and under what conditions. A major advantage of a trust compared to a will is a trust avoids probate. A will does not avoid probate. But for a trust to avoid probate, the real property must be owned by the trust. Real property transfer into a trust is by deed recorded with the county where the real property is located.

On the death of owner of 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 then sells or transfers the real property to the beneficiaries of the trust by deed.

Real property owned by a business entity such as a limited liability company or corporation avoids the probate courts and the recorder's office. Ownership transfer is internal according to the operating agreement of the business entity. A business entity owner is for rental property, not personal homes. Business entities in California incur at a minimum, an \$800 state tax.

Options to own are; in name only, as a co-owner, in trust, or as a business entity. The major distinction between these options is on the death of the real property owner, how will the real property transfer. Will it transfer in or out of probate court? Probate is time consuming, expensive and a matter of public record.

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