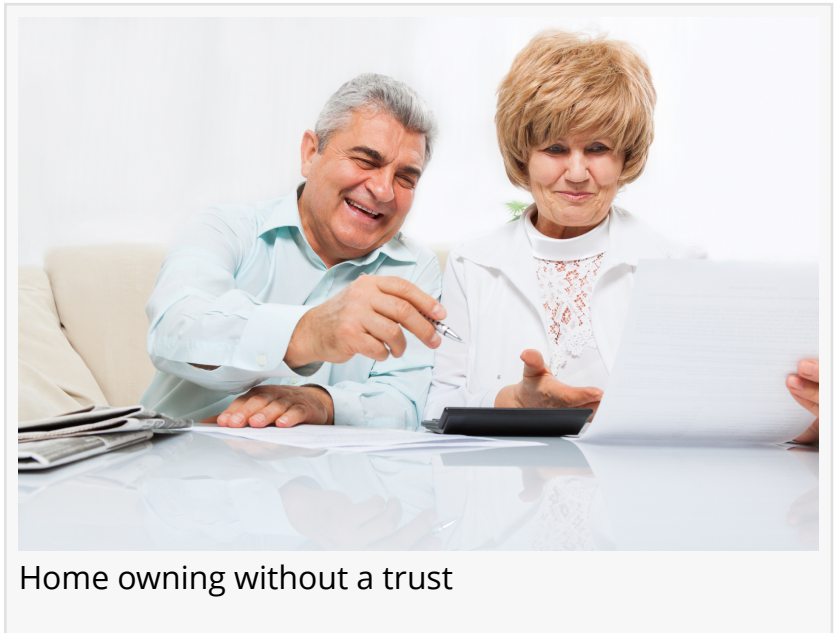


Can Two People Own a Home in California Without a Trust?

This post explores the options and the hazards for two home owners who do not want a trust.

HUNTINGTON BEACH, CA, UNITED STATES, September 10, 2021 /EINPresswire.com/ -- How real property is owned determines how it transfers on the death. Transfer is either 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.



Home owning without a trust

Real property owned by two or more individuals in name only are called "[tenants-in-common](#)." A tenant-in-common owner requires transfer in probate court. The surviving co-owner may not be the heir and may have a new co-owner.

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Mark W. Bidwell

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 of 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.

Real property owned by two or more individuals in name only are called "tenants-in-common." A tenant-in-common owner requires transfer in probate court to his or her heirs. 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." The survivor inherits from the deceased owner.

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