

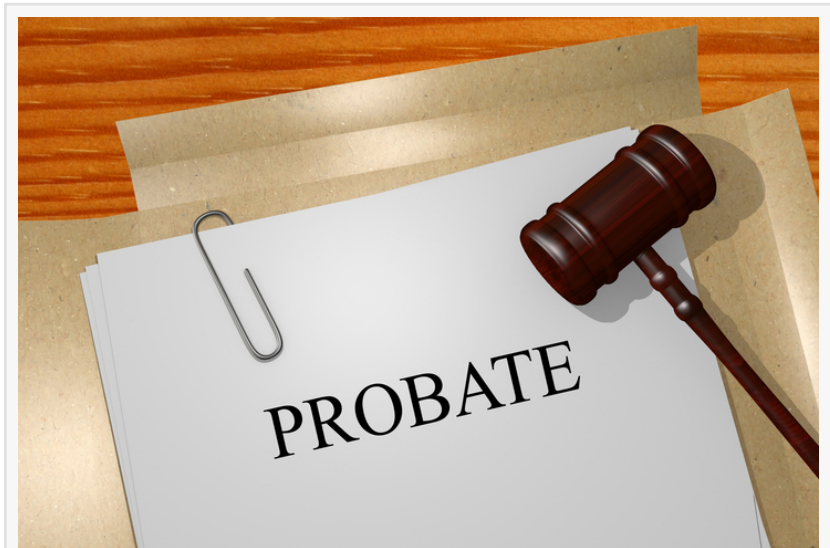
How Co-Owners of California Real Property Avoid Probate Without a Trust

California real property in joint tenancy avoids probate on the death of the first co-owner of real property. But the surviving owner has a problem.

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/EINPresswire.com/ -- [California real property in joint tenancy](#) avoids

probate on the death of the first co-owner of real property. But the surviving owner must have a trust to avoid probate. 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.



Three tiers of court involvement based on market value of real property

Real property co-owners who own in their names 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.

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. To avoid the probate court the survivor must create 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 to his or her heirs. Co-owners 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. The survivor must create a trust to avoid probate.

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