

Carefully Consider Options as a Co-owner Real Property in California

Individuals who take title in name only to California real property have four options to own.

HUNTINGTON BEACH, CA, UNITED STATES, July 28, 2022 /EINPresswire.com/ -- Individuals who take title in name only to California real property have four options to own. Options are either as [tenants-in-common](#), [joint tenants](#), as "[community property with right of survivorship](#)" or in name only.

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Mark W. Bidwell

The distinction between these options is what happens to an individual's share of the real property when that person dies. Right of survivorship is key. This right is found in joint tenancy and “community property with the right of survivorship.” Be aware that the term “community property” does not create the right of survivorship.

When a co-owner dies, the right to survivorship transfers the deceased owner's interest to the surviving owner or owners. This transfer is automatic in that it happens without any action by the survivor. But the survivor must inform the county where the real property is located that a co-owner has died.

Informing the county is by an affidavit death. A death certificate is attached to the affidavit and both are recorded with the county. Until the affidavit is recorded, the surviving owner cannot sell or use the real property as collateral to borrow.

The third option to own is as tenants-in-common. On the death of a co-owner, his or her interest transfers not to the survivor, but to the deceased heirs. The heirs are identified in the will. If there is no will, heirs are identified by California law known as “intestate succession.”

Intestate succession is a default government plan for those who do not plan. In this default plan the first to inherit is the spouse. If there is no spouse, then it defaults to children. If there are no children, parents inherit and so on. The major problem with either a will or intestate succession is the heir or new owner must file a petition in probate for in probate court. Probate is costly and

is time consuming.

The fourth option is also a default. To have the right of survivorship, owners must be identified in the deed as either joint tenant owners or as community property owners with the right of survivorship. All other co-owning defaults to tenant in common. If just names are listed as owners, the default is tenants-in-common. Phrases such as "husband and wife" or just the words "community property" also default to tenants in common.

The rights to survivorship must be clearly stated on the deed. Absent the magic words "joint tenants" or the entire phrase "community property with the right of survivorship" the default is as tenants in common. The distinction determines who inherits and if the assistance of the probate court is needed.

Post death transfer of California real property



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