



HOLDING TITLE AS JOINT TENANTS -VS- COMMUNITY PROPERTY OR A LIVING TRUST

Holding title as “Joint Tenants” or as “Community Property” involves a multitude of issues. Joint Tenants can be any number of persons while Community Property can ONLY be husband and wife.

A Joint Tenancy property is defined in the Civil Code as follows: “A joint interest is owned by two or more persons in equal shares”. A chief characteristic of Joint Tenancy property is the right of survivorship. When a joint tenant dies, title to the property immediately vests in the surviving joint tenant(s). As a consequence, Joint Tenancy property is not subject to disposition by will.

“Community Property” can be held with or without “Right of Survivorship”. The California Civil code defines “Community Property” as Property acquired by husband and wife only.” Real property conveyed to a married man or woman is presumed to be “Community Property”, unless otherwise specified. When expressly declared in the transfer document to be “Community Property with the Right of Survivorship”, shall, upon the death of one of the spouses, pass to the survivor, without administration, subject to the same procedures as a Joint Tenancy property. Without the “Right of Survivorship”, the one-half ownership will be subject to administration in the estate.



Holding Title in a Living Trust is an agreement between a trustor and trustee for the trustee to hold title to and administer designated assets of the trustor for the use and benefit of one or more beneficiaries. The Trustee manages the trust, and the Beneficiaries will receive the property after death. Only the trustee, on behalf of the trust, may own and convey any interest in real property. The trustee may only exercise the powers granted in the trust. The trustee is limited principally and most importantly by the provisions of the trust and, thus, may only act within the terms of the trust. The Probate Code contains general powers which, unless limited by the trust agreement, are sufficient for title insurers to rely on for sale, conveyance, and refinance purposes. The major benefit from holding property in a trust is that the property avoids probate after your death. A Successor Trustee will manage the trust if the Trustee is incapacitated or dies and will distribute the property according to the trust instructions.

It is recommended at the time the property is placed in a trust, either confirm that the existing title insurance coverage will be continued or obtain an endorsement to the existing policy naming the trust as an additional insured on the policy.

Consult your financial/legal expert to determine the best way for you to hold title to property. Call us today for more information.



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