



## New Law Creates New Vesting Options

As of July 1, 2001, a new form of holding title has been created that can be very beneficial to married couples who own real estate. Under previous law, married homeowners have had a dilemma when deciding how to take title to their property. Until now, married couples primarily chose between two vesting options: community property or joint tenancy.

When title is vested as “community property,” upon the death of a married person, one half of the community property of the deceased spouse belongs to the surviving spouse and the other half passes to the decedent’s estate. Since it is not predetermined who the decedent’s heirs are, the property will most likely be involved in probate.

In comparison, holding title as “joint tenants,” has a “right of survivorship” component which gives the surviving joint tenant automatic ownership of the decedent’s share of the property without requiring the probate court process.

“Community property” provides better tax advantages to the surviving spouse, but does not avoid the expense of administering an estate through the probate courts, as a “joint tenancy” would. Joint tenancy avoids probate, but could result in thousands of dollars in tax burden when the surviving spouse sells the property.

The newly created vesting option is “**Community Property with Right of Survivorship**” (Civil Code Section 682.1). This new form of holding title gives married couples the advantages of both community property and joint tenancy: a favorable tax outcome with no probate.

Changing the way you hold title is a very straightforward procedure. A new grant deed needs to be signed by both spouses and recorded at the County Recorder’s office. Contact the Title Company that handled your escrow when you purchased your home and they will likely prepare a new grant deed for you free or for a nominal fee. If you plan on purchasing a property, you may want to instruct your escrow officer that you would like to

use this new vesting option. This is a great option for married couples; however, this does not eliminate the benefits of holding title in a “living trust.”

Holding title in a Revocable Living Trust may be an even better option for married couples and can also offer benefits to individuals. Individuals (or couples) can avoid probate by establishing a Living Trust, just as married couples can avoid probate through Community Property with Right of Survivorship.

Why do you want to avoid probate? Because probate is a lengthy and costly legal process which can cost anywhere from 2% to 4% of the estate’s value in court and legal fees. In California, the probate fees are set on the market value of the assets in the estate. So, for example, a house worth \$600,000 could be subject to at least \$12,000 in probate fees, even if \$550,000 is owed against the property. In addition to avoiding probate costs, a living trust can help reduce or eliminate estate taxes. Currently, a married couple will receive an exemption from estate taxes on only \$675,000. However, with a living trust in place, a couple can shelter \$1,350,000 from estate taxes.

There are a host of other reasons that couples or individuals should consider setting up a Living Trust. Living Trusts are easy to set up and require little on-going maintenance. An estate attorney typically charges between \$1,000 and \$2,000 to set up a Living Trust.

Since the manner in which you take title can have significant tax and legal consequences, it is important that you speak with your attorney, accountant, or estate planner to determine which vesting option is best for you.

*This article was contributed by Bob Curtis who has been the #1 Century 21 Agent in Santa Barbara during the last 15 years. He currently serves on the CHP Board of Directors.*