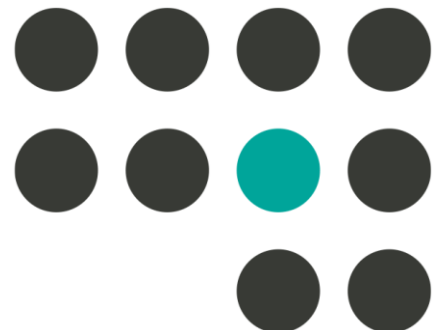


# Real Estate Ownership: Community Property with Right of Survivorship Better than Joint Tenancy



There are several traditional methods of holding title to property, including: tenancy in common, joint tenancy, or community property. In addition, California allows married couples to hold property as **“community property with right of survivorship.”** Each method has its own advantages. You may want to hold title differently for different parcels of real estate, depending on who the other owners are.

### How should a married couple hold title to real estate property that they purchase?

**If you do not have a living trust set up** and you and your spouse jointly own real estate in California, you should strongly consider holding title to your real estate as “community property with right of survivorship.”

#### Why?

If you hold property **as tenants in common**, you each own an undivided portion of the property. You can each sell, lease or will away your ownership percentage at any time. Your ownership portion is part of your estate and subject to probate. While your heir will receive a step-up in basis on their inheritance--step-up in basis means that your heirs' basis in the inherited portion of the property will be the estimated fair market value at the deceased individual's date of death, instead of the amount you paid for the property, probate costs can be extremely costly and time consuming for your heirs. In California, probate is required any time a deceased individual owns more than \$150,000 in assets subject to probate. This method of holding property is most common when two or more individuals who are not married to each other own property together.

If you hold property as **joint tenants**, the joint tenants automatically inherit the other individual's ownership. You have the following advantages: you avoid probate and your spouse cannot will away his or her ownership to another individual. However, a big disadvantage is that the surviving spouse only receives a step-up in basis on the inherited portion. For example, if Joe and Mary bought their house in 1980 for \$65,000 and hold title as 50/50 joint tenants. Mary passes away in 2017 when the house is worth \$700,000. No depreciation has been taken on the property. Joe's basis in the property is \$382,500 (His original basis \$65,000/2 + inherited from Mary \$700,000/2). If Joe decides to sell the house in 2020 for \$725,000, he would have \$342,500 of gain (\$725,000 less \$382,500). As a single person, he pays tax on \$92,500 of gain (\$342,500 less \$250,000 exclusion on gain of sale of personal residence per tax law). If the property was an investment, he would pay tax on the full \$342,500.

**Community property** is a form of holding title that is only available to married couples. If you hold property as community property, the survivor gets a double step-up in basis on the spouse's death, however, fast-track probate is required and each spouse can will away their ownership share to another individual. A double step-up in basis means that the surviving spouse's tax basis in the property is the total fair market value of the property at the deceased spouse's death. If Joe and Mary held title to their property as community property, Joe's basis at Mary's death is \$700,000. If Joe sells the house in 2020 (again for \$725,000), his gain would only be \$25,000 and he does not get taxed on any of it since it is his personal residence. If it was an investment, he pays tax on \$25,000.

Holding title as **community property with right of survivorship** gives married couples the hybrid benefits of joint tenancy and community property: you avoid probate, your spouse cannot will away his or her ownership to another individual, and the surviving spouse receives a double step-up in basis. It is the most cost-effective means of transferring property to a surviving spouse. So, Joe saves probate costs and pays no income tax on the sale of the property if it is his personal residence (see community property example above for computation of gain subject to tax).

**To summarize:**

Tenant In Common	Joint Tenancy	Community Property	Community Property with Right of Survivorship
Requires probate	Avoids probate	Requires fast-track probate	Avoids probate
Single step-up in basis	Single step-up in basis	Double step-up in basis	Double step-up in basis
Ownership can be willed away	Survivor is required to inherit the property	Ownership can be willed away	Surviving spouse is required to inherit the property
Grantee signature not required	Grantee signature not required	Grantee signature not required	Grantees must sign deed

*Table is adapted from Spidell California Taxletter*

**How do you convert to community property with right of survivorship?**

If you already hold property in a form other than community property with right of survivorship, you can change the form in which you hold title by executing new deeds. You and your spouse will need to sign the deeds as both the grantor (the persons transferring the property) and the grantees (the persons receiving the property). Please consult your lawyer to get the specific details on accomplishing this change.

Holding title to property as **community property with right of survivorship** is not limited to real estate-- you can hold title to your other appreciating assets such as investment accounts, bank accounts, and other property as **community property with right of survivorship**.

Remember that holding title as **community property with right of survivorship** is ideal for couples **who do not need or have** a living trust. If you have a living trust, the living trust may already be worded to work in the same manner as community property with right of survivorship.

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