

# affirmative escrow

c o r p o r a t i o n

2860 E. Thousand Oaks Blvd. Suite 200  
Thousand Oaks, CA 91362

## **Joint Tenants vs. Community Property with Rights of Survivorship**

Property held as a joint tenancy and property held as community property with rights of survivorship have many similar characteristics. When a married couple owns property as a joint tenancy or as community property with rights of survivorship, the spouse who outlives the other automatically receives the deceased spouse's property interest. However, the two types of ownership differ regarding how each is taxed upon the death of a spouse.

### **Joint Tenancies**

When a married couple owns property as a joint tenancy, both spouses share equal ownership interests in the entire property. For example, if a married couple owns a home as joint tenants, each has a 50 percent interest in the home. However, these interests are undivided. This means that each spouse is entitled to use the entire property and the interests cannot be split up. When property is held as a joint tenancy it includes a right of survivorship. Thus, when one spouse dies, his interest automatically passes to his surviving spouse. The surviving spouse is then left with a 100 percent share of the property.

### **Community Property Basics**

There are nine states that recognize community property: Arizona, Idaho, Louisiana, Texas, Wisconsin, Nevada, Washington, New Mexico and California. In these states, marital property is viewed as belonging to each spouse equally. Each spouse has a right to pass on his share to whomever he wishes in a last will and testament. This differs from property owned as a joint tenancy in that neither spouse can pass their share to anyone but the other spouse. In a community property state, a spouse is typically entitled to some of the community property when the other spouse dies without a will dependent on whether there are children and if they are the children of the surviving spouse.

### **Community Property With Rights of Survivorship**

Some community property states allow married couples to hold property as community property with right of survivorship. When community property is held this way, the surviving spouse is certain to receive the deceased spouse's share. In other words, spouses are not allowed to "bequeath," or pass, their shares of the community property to someone other than her spouse in a will.

### **Taxes on Profits**

One main difference between property held as a joint tenancy and property held as community property with right of survivorship is the manner in which profits from the sale of jointly-held property is taxed. Generally, property held as community property with right of survivorship has tax advantages over a joint tenancy. In a joint tenancy, when one spouse sells property that was held jointly prior to the death of the other spouse, a portion of the profit is subject to capital gains tax. Whereas, community property with right of survivorship is not subject to capital gains tax when sold.

### **Additional Differences**

Parties who are not married may hold property as a joint tenancy. For example, a brother and a sister may inherit property as a joint tenancy from their parents. However, community property with the right of survivorship exists only in a marital or registered domestic partnership context.

*The preceding summaries are provided for informational purposes only. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended. There are significant tax and legal consequences on how you hold title. We strongly suggest contacting an attorney and/or CPA for specific advice on how you should actually vest your title.*