

Joint Tenancy vs. Community Property

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Q. A lot of married couples are holding title to their homes as "joint tenants" instead of as "community property." What do these terms mean and what are the advantages and disadvantages of each?

A. First off, everyone's needs vary. You should consult with your tax planner and/or your attorney before deciding which best meets your particular objectives and needs.

For some people, however, the best choice may be a new community property option that combines the benefits of "joint tenancy" and "community property."

Absent an agreement to the contrary, community property generally is property acquired by a married couple during their marriage. It does not include separate property owned before their marriage or other forms of separate property, such as gifts or inheritances received during the marriage.

Joint tenants, meanwhile, are two or more individuals who equally own a piece of real estate. The two mechanisms afford titleholders different ownership rights, different tax benefits and different survivorship benefits should one die.

A key benefit to joint tenancy is called a "right of survivorship."

A right of survivorship means that when one joint tenant dies, his or her interest in the property passes automatically to the surviving joint tenant or tenants without having to go through a court procedure called probate.

A right of survivorship can be terminated by any owner prior to death.

In 2001, however, California enacted a statute allowing a married couple to hold real estate as a community property with the right of survivorship.

While avoiding probate is good from an administrative perspective, community property without the right of survivorship allows a spouse to will his or her interest to anyone he or she chooses.

If there are children from a prior marriage, then one spouse may want a portion of his or her property to go to the children.

Community property also may have tax benefits that joint tenants don't get.

With community property, the basis - or the amount invested in buying and improving the property - is increased to current market values for the entire parcel upon the death of one spouse.

When the home is sold for a profit, this "stepped-up basis" is then used to calculate the couple's investment for capital gains tax purposes.

Under joint tenancy, only the interest held by a co-owner who dies gets the same stepped-up basis. Hence, a widow or widower gets a stepped-up basis for only half the property, and the tax he or she pays when selling the home may be greater - an important consideration at a time when Orange County home prices have tripled in nine years.

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