

New Law creates Community Property with Right of Survivorship

Valid on July 1, 2001, a new form of holding title as “Community Property with Right of Survivorship” ensures that the surviving spouse receives the favorable tax status of community property under federal law while avoiding probate administration expenses (Civil Code Section 682.1).

This act seeks to avoid the necessity of getting a probate court decree that “joint tenancy property” was in fact community property. The effect of such a decree against the IRS has been questionable since Estate of Young v. Commissioner, 110 T.C. No. 24 (1998).

Under existing law, upon the death of a married person, one-half of the community property of a deceased spouse belongs to the surviving spouse and the other one-half passes to the decedent’s estate. In comparison to holding title as “joint tenants with right of survivorship,” “community property” only provides federal tax advantages but does not avoid the expense of administering an estate through the probate courts, as a “joint tenancy” would.

This bill also permits the right of survivorship to be terminated prior to the death of either spouse the same way a joint tenancy may be severed.

Please note that Equity Title will not accept documents vesting title as “community property with right of survivorship” created prior to the legally effective date of July 1, 2001.



On the web at www.EquityTitle.com

Order No. _____

Escrow No. _____

Loan No. _____

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFIDAVIT - DEATH OF SPOUSE
(Community Property with Right of Survivorship)

STATE OF CALIFORNIA }
COUNTY OF _____ }ss

_____ ("Surviving Spouse") of legal age, being first duly sworn, deposes and says:

1. That _____ ("Decedent") is the person referenced in the attached certified copy of the Certificate of Death.
2. That he/she was legally married to the Decedent as of the date of death referenced in the attached Certificate of Death.
3. That he/she and the Decedent are the same persons as _____ named as the grantees ("Grantees") in that certain _____ dated _____, _____ executed by survivorship (which form of title was accepted by the Grantees) and which document was recorded as Instrument No. _____ in Book _____, Page _____, of Official Records of _____ County, California, covering the following described property situated in the County of _____, State of California.

Dated: _____

SUBSCRIBED AND SWORN TO before me, the undersigned,
A Notary Public in and for said State,
This ____ day of _____, _____
WITNESS my hand and official seal.

Signature _____
(Name Typed or Printed)