

COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP



When taking title as Community Property with Right of Survivorship it is important that the additional language (with Right of Survivorship) be added after Community Property to not confuse only taking title as Community Property. There is a difference between the two vestings especially when one of the owners has passed away.

Community Property prior to the enactment of the Community Property with Right of Survivorship (in July 1, 2001) is required to be handled differently in the title to property once one of the current owners has passed away.

Prior to the enactment the Affidavit recorded must have the following criteria:

1. The property described had to have been at all times since acquisition considered the community property of him/her and decedent.
2. More than forty (40) days have passed since the death of the named decedent.
3. No notice, pursuant to probate section 13541 of the probate code, did not take place. The notice would have to be recorded by another heir claiming an interest in said property under the decedent's will.
4. The property described had not passed to someone other than the Affiant under the decedent's will or by intestate succession.
5. That the property has not been disposed of in trust under the decedent's Will.
6. That there are no probate proceedings filed or to be filed pursuant to Probate Code Sections 13502 and 13503.

Effective July 1, 2001 taking title as Community Property with Right of Survivorship **none of the above is required.** In fact, all that is necessary is to record an Affidavit Death of Spouse under Community Property with Right of Survivorship. This Affidavit form is as simple as the Affidavit death of Joint Tenant. This is all due to the simple language of "Community Property with Right of Survivorship." So be sure that title is taken properly under the Community Property with Right of Survivorship.

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