

New Method of Holding Title Community Property with Right of Survivorship

Frequently Asked Questions

- **1a) Can we hold title to our property as community property and still have the right of survivorship?**
- **1b) Can my clients hold title to their property as community property and still have the right of survivorship?**

Yes, the California legislature enacted legislation (AB 2913), effective July 1, 2001, which allows married couples in California to hold title to real and personal property as "community property with right of survivorship."

- **2) What is the purpose of this new law?**

The goal of the legislation was to establish the right of survivorship benefit while maintaining the favorable tax status of community property under federal tax law.

- **3) What are the benefits of the new law?**

The survivorship benefit allows title to pass to the surviving spouse at the death of one spouse. Since the property is held as community property, the surviving spouse also gets the benefit of a stepped up basis for 100% of the property upon the death of a spouse. The surviving spouse may use an affidavit of death of spouse to satisfy title company underwriting requirements to convey or encumber title. Probate proceedings are not necessary to transfer title to the surviving spouse.

- **4) As a Realtor, do I need to do anything differently when writing an offer?**

No, this should be treated as any other form of holding title. The standard California Association of Realtors Residential Purchase Agreement and Joint Escrow Instructions (and receipt for deposit) was recently adopted for use and does not require that the manner of taking title be chosen at the time the offer is made. Rather, item number 12.B of the form provides: "Title shall vest as designated in Buyer's escrow instructions."

- **5) What steps should be taken if my clients or I decide to change our vesting to the new community property with right of survivorship?**

Obtain a blank Grant or Quitclaim Deed form from a stationary store or title company. Using your or your client's existing deed, complete the information on the form including the return mailing address and grantor and grantee names. The legal description of the property may be copied from the original deed. The grantor will be the grantees from the original deed, and the grantee will be the same parties, only should be listed as "John Doe and Mary Doe, husband and wife, as community property with right of survivorship".

The form must be signed in front of a notary public and then can be delivered or mailed to the County Recorder's office with a check for recording fees. Recording fees are \$7 for the first page of the document, and \$3 for each additional page. Properties with long legal descriptions may incur an additional charge for a "Survey Monument Preservation" fee. Refer to the existing deed to see if this charge applies.

THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE

PLANNING, YOU and YOUR CLIENTS SHOULD CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

[Copyright © 2008 - The First American Corporation](#)