Legal Rights to Community Property, Separate Property and Quasi-Community Property Tip Sheet by Mark W. Bidwell

Any real property, regardless of where it is located, owned by a resident of California is either separate property, community property or quasi-community property. This Tip Sheet by Mark W. Bidwell, a licensed California attorney, explains the legal consequences of each type of property.

HUNTINGTON BEACH, Calif. (PRWEB) November 28, 2018 -- For a married couple living in California, real property located in the United States is classified as either separate property, community property or quasi-community property. The classification has great impact on each spouse’s legal rights to the real property as explained in this Tip Sheet by Deed and Record.

Real property acquired prior to marriage or from an inheritance is separate property. Separate property belongs to spouse who either inherited the property or purchased the property prior to marriage. Real property acquired during the marriage from income of either spouse is community property with each spouse owning one-half.

California is a community property state. Most states are common law states. Quasi-community property is real property outside of California acquired during marriage. Quasi-community designation confers community property rights on these real properties and subjects them to the laws of the state of California for couples living in California.

If a married couple divorce, each spouse owns one-half of real property classified as community property and quasi-community property. The spouse who owns real property classified as separate property is the sole owner of that property in a divorce. But separate property can be transformed into community property by a process known as transmutation.

Transmutation occurs when the non-owning spouse is added on title as an owner by a deed. Another type of transmutation occurs when the principal of a loan on separate real property is paid from income of the marriage. For example, one spouse owns a house acquired prior to marriage. During the marriage payments are made on the loan. The non-owning spouse acquires a community property interest in the property in proportion of loan principal paid down during the marriage to total market value.

How real property is classified also affects inheritance rights of the surviving spouse. For community property the surviving spouse owns one-half and inherits the other half. Community property receives a step up in basis on the death of the first spouse for favorable capital gains tax treatment on the subsequent sale of the real property.

Separate property owned by the deceased spouse is inherited by both the spouse and children of the deceased. This requires the children’s consents and cooperation in the sale or financing of the real property. Children under 18 cannot contract. Any sale with a minor as a co-owner requires appointment of a guardian in a court of law.

All real property owned by married Californians, regardless where it is located in the United States, is either separate, community or quasi-community property. The designation affects a spouse’s rights in a divorce or on the death of the other spouse. As a general rule a spouse will always have a one-half interest in community and
quasi-community property. A non-owning spouse will have either no ownership or at best, a partial ownership interest in separate real property.

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