Required Actions by Surviving Spouse Who Owns Real Property in California Tip Sheet by Deed and Record

A surviving spouse must take action to take control while living and avoid probate on death real property in California. Tip Sheet by Deed and Record explains how to take control and how to avoid probate.

(PRWEB) September 12, 2019 -- This Tip Sheet by Deed and Record explains actions required by the surviving spouse to take control of the real property while living and to avoid probate court on death. Real property in California owned by a married couple should be with right of survivorship. This right is created on the deed conveying real property to the married couple and must specifically state either “joint tenancy” or “community property with the right of survivorship.” No other wording will work.

This right of survivorship allows for the deceased spouse’s ownership to transfer to the survivor without filing a petition in probate court. The right is asserted by the surviving with a document known as an “affidavit of death.” The affidavit is filed with the county recorder. Then the surviving spouse can mortgage or sell the real property.

The affidavit avoids probate on the death of the first spouse, but not on the death of the second spouse. The second spouse must take the additional step of either creating a living trust or executing a deed known as a “revocable transfer on death deed” also known as a (“TOD Deed”).

A TOD Deed transfers on death the family home owned by one person to other people named on the deed. While alive, the owner maintains control of the family home, property taxes remain the same and the deed can be revoked at any time. The TOD Deed does not affect eligibility for Medi-Cal.

A TOD Deed is new to California. Currently, title companies will not issue title insurance for a period of three years after the death of the owner. This effectively prohibits the sale or the use the property as collateral for a loan for the three, year period. The established alternative is the “living trust.”

Like a TOD Deed, the living trust allows the owner to maintain control of the real property. A California living trust protects the property tax base. A living trust is more expensive but has no waiting period for title insurance and provides flexibility in distribution of real property.

This flexibility allows for contingent and delayed distributions. Examples of a contingency is an alternative distribution if an heir were to predecease the owner. A delayed distribution is needed if an heir is a minor, under the age of 18 years. Minors cannot directly receive inheritances.

Most married couples take ownership either as joint tenants with the right of survivorship or as community property with the right of survivorship. There is no problem on the death of the first spouse with the right of survivorship. But before the second spouse dies, he or she must prepare a revocable transfer on death deed or a living trust.

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