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HOLDING PROPERTY IN COMMUNITY PROPERTY VS. JOINT TENANCY

In a Community Property State, such as California, there is an advantage to married couples holding title to their assets in community property verses joint tenancy. The difference is with community property ownership upon the death of the first spouse, the surviving spouse gets a new cost basis in one hundred percent (100%) of the value of the asset. In contrast, if title is held in joint tenancy, upon the death of the first spouse, the surviving spouse gets a new cost basis in fifty percent (50%) of the value of the asset.

To illustrate, assume husband and wife own an asset valued at One Million Dollars ($1,000,000) with a cost basis of One Hundred Thousand Dollars ($100,000). Further assume the husband and wife hold title as community property. Upon the death of the first spouse, the surviving spouse gets a stepped up cost basis equal to One Million Dollars ($1,000,000). If the surviving spouse thereafter elects to sell the asset, his or her capital gain or loss is based upon the One Million Dollar ($1,000,000) cost basis.

In contrast, if the same asset were owned in joint tenancy, the surviving spouse would get a stepped up cost basis on the deceased spouse's fifty percent (50%) of the asset, but not on his or her own fifty percent (50%) of the asset. Therefore, the surviving spouse would have a cost basis equal to Five Hundred Thousand Dollars ($500,000) on the deceased spouse's one-half of the asset and Fifty Thousand Dollars ($50,000) as one-half of the original cost basis. Therefore, the surviving spouse gets a stepped up cost basis of Five Hundred Fifty Thousand Dollars ($550,000). Assume the surviving spouse thereafter sells the asset for One Million Dollars ($1,000,000), he or she will realize a capital gain of Four Hundred Fifty Thousand Dollars ($450,000).

Because of the unlimited marital deduction for federal estate tax purposes between spouses, assuming the surviving spouse is a United States citizen, there is no federal estate tax upon the death of the first spouse.

Historically, one of the primary advantages of joint tenancy over community property was that it passed by "rights of survivorship" to the surviving spouse, so transfer of the asset was easy and inexpensive. In contrast, historically community property passed by the deceased spouse's Will as to his or her fifty percent (50%) interest in the community property asset. This historical distinction is no longer important in California, as California now recognizes "community property with rights of survivorship." This gives the ease of transfer previously associated with joint tenancy, along with the one hundred percent (100%) stepped up cost basis advantages of community property.