

WHAT YOU NEED TO KNOW ABOUT PROPERTY OWNERSHIP AFTER THE DEATH OF A LOVED ONE

A reputable title company like Chicago Title, will be able to guide you through this difficult time and process.

The method of holding title to your property will dictate what needs to occur in order for the property to be properly conveyed. When property is owned, the interest that one has may be passed on to a spouse and/or heirs.

Let's look at common ways to hold title and how each one handles the death of an owner who is a natural person.

COMMUNITY PROPERTY

When one passes away, one-half of the interest automatically passes to the remaining party and becomes their sole and separate property. The other half will also pass to the survivor if no will indicates otherwise. This method is available to married couples and domestic partners.

There can be significant advantages to estate planning with this vesting method as the value has a double step-up basis that is calculated as of the date of the decedent's passing, not the initial acquisition date.

If probate is avoided, then an affidavit of death with a certified copy of the death certificate needs to be recorded. If probate is involved, the probate court will issue either an order, letters testamentary or letters of administration.

COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

This method is very similar to the previous one, with the only difference being that the decedent's half interest automatically passes to the survivor, giving them 100% ownership. The half interest is still subject to the deceased's debts and administration of the estate. An affidavit of death with a certified copy of the death certificate would need to be recorded as evidence of the facts as they pertain to the property.



JOINT TENANCY

If this method's four elements or rules are followed, the joint tenancy is available to almost everyone. Ownership is considered to be one estate despite the number of co-owners, and the co-owners own the property as if they were one person. Joint tenancy must be properly established, and if any of the four elements are not met, then the property is not owned by joint tenants, but rather by tenants in common.

THE FOUR RULES ARE:

1. Unity of Interest
2. Unity of Title
3. Unity of Time
4. Unity of Possession

Upon the death of a joint tenant, the deceased's interest automatically passes to the remaining joint tenant(s) as if acquired at the time of the initial acquisition. An affidavit of death of joint tenant with a certified copy of the death certificate needs to be recorded. Joint tenancy can be tricky, so contact your title company or legal counsel with any questions.



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TENANCY IN COMMON

The method allows for multiple entities to own property, each as to their own portion. When an owner passes away, their interest would pass to their estate, so the probate court would always be involved with this method of ownership. It can be a lengthy process for the probate court to issue letters testamentary or letters of administration. Either testamentary or administrative letters are required for title insurance to be issued, and certified copies of them would be recorded to evidence the death of the owner and the proper estate representative who can sign on behalf of the estate.

TRUST

Legally, in California, a trust cannot hold title to property. This is why title is always vested in the trustees, as they have the fiduciary responsibility to act on behalf of the trustors. The trust document and any amendments will identify who the successor trustees are and in what order they are appointed to serve. If a husband and wife are the trustees of their trust, the trust document will dictate whether, upon the death of one, the surviving spouse can act alone as trustee or if another trustee is appointed to act jointly. The trust will usually list several alternates or successors to the trustee position and also define what powers

the trustees, co-trustees or successor trustees have. If a trustee passes away, a document called an affidavit of death of trustee, along with a certified copy of the death certificate, needs to be recorded. Your title company will ask for a copy of the trust, and any amendments to it to review and confirm the proper parties are identified.

As you can see, property and the documents used to evidence a death can be complicated depending on the method in which you hold title. The death of a loved one is hard enough; Chicago Title is ready to help you with your transaction no matter how complicated or daunting it appears.

Please contact us with any questions!