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Holding Real Estate Title in California

In this new era of conscious dispensation, most people have been evaluating ways to hold title in their real estate holdings. Some clients have inquired about these issues, so I thought it right to share these discussions with you.

In California, predominant ways to hold title for couples are Community Property and Joint Tenancy. Community Property has some advantages, including the capability of a full stepped up of the basis to the current price to the survivor (meaning there is no tax consequence at the appreciated value at death). However, Community Property, in most cases, has to go through Probate, which can be expensive, since it is based on current property value. Community Property can also be easily willed to a different party. This could possibly be a surprise to the surviving spouse, as another entity has to share the 50% of the property previously unknown to the surviving spouse, like the decedent's cat.

Joint Tenancy has two main advantages including the absence of a Probate. Moreover, the property is automatically transferred to the surviving spouse. The obvious disadvantage is the tax consequences of the property, as only half of the property value (the decedent's portion) is stepped up in basis.

An example will help in explaining the consequences of both options. If a property was acquired in 1990 for $100,000, and a spouse passed away in 2009, with the property valued at $300,000, assuming each party has initially $50,000, the surviving party in Community Property scenario has a stepped up basis of $300,000, thus no taxes will be due if the property is sold. However, in a Joint Tenancy scenario, the stepped up basis is ($150,000 for the decedent, plus $50,000 of the surviving spouse). Thus the surviving spouse will pay taxes on $100,000, which at a 20% tax bracket will be $20,000. Although, as you know the current $500,000 exemption on sale of a home may negate this tax, if applicable.

Remember that with a Trust, you can spell your wishes taking the best of both. Remember to consult with your CPA and attorney in devising the best tool for these matters.

Al Som-Anya, MBA, Broker

A Living Trust

As a smooth transition away from Community Property and Joint Tenancy, a couple may decide to create a Living Trust, here is why;

- A living trust avoids the perils of a probate, which can be expensive and time-consuming as it is based on the fair market value of the property.
- A living trust can also reduce or eliminate federal estate taxes by setting up an Exemption Trust.
- A living trust can also avoid the use of conservatorship, which is used when an individual cannot manage his/her financial affairs.
- A Trust is revocable during the lifetimes of the trustors.

Disadvantages of living trusts:

- Refinancing a real property in a trust may require transferring the property out of the trust.
- A living trust normally costs more than a will.

As always, I advise that you consult with your tax attorney.

Al Som-Anya

THE TREND!

California	
Median Price-SFH	**Date**
$318,660	**08/10**
$314,850	**07/10**
$293,400	**08/09**
Sales change Prior Month 1.2%	
Sales change Prior Year 8.6%	

Sacramento	
Median Price - SFH	**Date**
$186,752	08/10
$186,182	07/10
$192,047	08/09
Sales change Prior Month 0.3%	
Sales change Prior Year –2.8%	
Source C.A.R Research Dept.	

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