

METHODS OF HOLDING TITLE THAT HELP TO AVOID PROBATE



CHICAGO TITLE

In California, the way you hold title to property plays a critical role in determining whether your estate will be subject to probate—a legal process that can be lengthy, costly, and public. Probate is typically required when assets are held solely in an individual's name without a mechanism for automatic transfer upon death. However, certain methods of holding title, can help bypass probate. These approaches allow property to transfer directly to surviving owners or designated beneficiaries. Proper titling not only ensures your wishes are honored but also protects your loved ones from unnecessary legal hurdles and expenses.



A few vesting methods that help pass title without probate are:

- **Joint Tenancy or Community Property with Right of Survivorship**

One of the most common forms of ownership between a husband and wife is Joint Tenancy. With this vesting, Title will automatically pass to the surviving spouse upon the death of their spouse. Another common way for a married couple to hold property is through Community Property with Right of Survivorship. This means that when one spouse dies, ownership automatically transfers to the surviving spouse. It's important to understand that "Community Property with Right of Survivorship" is not the same as "Community Property." With "Community Property", the deceased spouse's share goes to their estate, not directly to the surviving spouse. In that case, the surviving spouse may need to change the ownership type to avoid probate of their estate.

- **Joint Tenancy between multiple individuals**

You do not have to be married to hold title as joint tenants. Any number of individuals can hold title as joint tenants. Upon the death of a joint tenant, their interest passes to the remaining joint tenants. The last remaining joint tenant will have to consider another form of ownership to avoid a probate of their estate.

- **Trust**

Trusts are a common probate avoidance tool. There are a variety of trusts that can be used depending on the complexity of the estate. To be assured that the Trust is properly prepared, and will pass title to the beneficiaries, Trusts typically require the assistance of an attorney. If the trust fails for any reason, it will typically require a probate to administer the estate.

- **Transfer Upon Death Deed (TOD)**

A TOD lets a property owner name a beneficiary to receive their real estate when they die—without going through probate. The owner keeps full control of the property during their lifetime and can revoke or change the deed at any time. To be valid, the TOD Deed must follow strict rules when being recorded. This method offers a simple, low-cost way to transfer property directly to heirs.

- **Entities**

Less common, an entity may be the appropriate way to pass ownership to another party without probate. A corporation, Limited Liability Company, or Partnership may be a consideration.

It is strongly recommended to consult a qualified real estate attorney when determining how to hold title to your property. Choosing the right way to hold title is important for protecting your interests and avoiding probate upon the death of an owner(s).



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