

Life Planning Newsletter
The Law Offices of James A. Busse Jr.
Long Beach CA, Carson City NV.
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Happy Springtime from Finca Los Anonos

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Planning **Property ownership Primer**

Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse.com

PROPERTY OWNERSHIP – PRIMER

The form of ownership touches real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Following is a short list of some of the most common ways property owners vest title.

SEPARATE PROPERTY OWNERSHIP: Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. In this type of vesting the deed will say **To: property owner A (Single or Married or Registered Domestic Partner) (Man or Woman) as his or her separate property.** If the property owner is married the non-owner spouse will have to execute a quit claim deed to ensure that both spouses want the property owned by the one spouse. It is important to note the non owning spouse or Registered Domestic Partner can obtain a community interest in the separate property of the other spouse if community income (income

earned by either spouse during the marriage) is used to pay for or improve that separate property.

COMMUNITY PROPERTY OWNERSHIP: A married couple or Registered Domestic Partners may own property as Community property or as Community Property with Right of Survivorship. The Deed will say **To: A&B, Husband and wife Or A&B Registered Domestic Partners as Community Property or as Community Property with Right of Survivorship.** In California, real property conveyed to a married person, or to a registered domestic partner, is presumed to be community property, unless otherwise stated. Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property, by will. It is very important to note that the term "With Right of Survivorship" cuts off either owner from transferring title to someone other than the surviving owner by will. On the death of an owner, the decedent's interest ends and the survivor owns the property. So in a second marriage where one owner may want to will his or her portion of the estate to the children of the first marriage, taking title as community property with right of survivorship cuts off that right. Once property is taken as community property, title can not be changed without the written consent of both owners. Property acquired as **A&B, Husband and Wife as Joint Tenants** is treated as property owned by them as **Community Property.**

JOINT TENANCY OWNERSHIP: A form of vesting title to property owned by two or more persons, in **equal** interests, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy estate. The Deed will say: **To A&B&C all as Joint Tenants.** When one joint tenant dies, title to the property is automatically conveyed in equal shares to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will. A joint Tenancy can be broken by any of the Joint Tenants by filing a deed conveying their portion to himself as a tenant in common.

TENANCY IN COMMON OWNERSHIP: A form of vesting title to property owned by any two or more individuals in undivided fractional interests. These fractional interests may be unequal in quantity or duration and may arise at different times. Each tenant in common owns a share of the property, is entitled to a comparable portion of the income from the property, and must bear an equivalent share of expenses. Each co-tenant may sell, lease or will their share of the property. The deed may say: **45% to A and 55% to B as Tenants in common.**

LIFE ESTATE: One can own less than the full property. A holder of a life estate only owns the right to live in, collect rents and profits from, pay taxes on and pay the interest for any loans on the property. One can own a life estate for their life or the life of another. For instance the deed might say: P grants a life Estate to A for the life of B then to C. (When B dies, A has no right to occupy the property and C becomes the sole owner). The value of a Life Estate is that a person can give another the right to occupy the property. The property value is very low because the value of the life estate is low. In the above example the bulk of the property's value is contained in P's estate. There are many other ways that limit one's ownership of property. Most relate to the actual property owned (mineral rights, water rights, land, etc. or the time and conditions of ownership).

Finally, there are non human entities that may own property. For instance a Corporation, Limited Liability Company, or Trust may own property as a sole owner or Tenant in Common. Since none of these "entities" die or marry, They may not own as a Joint tenant or Community Property. A

partnership may hold title to property as the sole owner. A revocable trust may also hold title in the name of the trust. Generally, if the trust is properly revoked, title to the property reverts to the original status when it was transferred to the trust.

One dilemma couples encounter when they divorce is the problem of changing the beneficiaries of their property after the divorce is started. California law treats a spouse as a spouse until the divorce is final. Often a living trust will give the property to the surviving spouse on the death of the first spouse to die. If one spouse dies after the divorce papers are filed but before the divorce is final, the surviving spouse will inherit the property. On the back of the Summons served at the start of the divorce is an Automatic Restraining Order that prevents either spouse from changing the trust without the permission of the other spouse (in writing) or with the approval of the court. It is important that both spouses know this and either revoke the trust or change it accordingly at the early stages of the divorce. Having seen a number of trust mill living trusts or trusts that were created from a form provider like those who say they do it for \$300 or so, the trust may state things that cloud property ownership or limit the ability of one to undo what was done when the trust was created. Review and complete understanding of the Trust is very important for blended families.

Since one's home or business property is often the most valuable portion of one's estate. It is important that the buyer of property understand the options and the full implications and responsibilities of real property ownership. The Deed is all when it comes to property ownership. It is also the most often ignored portion of the large stack of papers one gets when they buy property. Not understanding it can lead to many unanticipated and costly events.



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