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## COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

By Victor Sy, CPA, MBA

Married couples buying property are asked to decide how they should hold title:

1. Joint tenancy or
2. Community property.

Basically, it is a choice between the ease of transfer to the survivor for joint tenancy and the tax benefits of holding property for community property. Unfortunately, it also a choice between the loss of "step-up basis" (meaning the increase of acquisition cost to fair market value to reduce capital gains tax) for joint tenants and the inconvenience of having to change titles when the first spouse of a community property dies. Fortunately though, there is a **new third choice** that combines the benefits of the first two choices: community property with right of survivorship.

### Community Property with Right of Survivorship:

1. Allows double step-up of both bases.
2. Guarantees that the survivor inherits the property, no matter what.
3. Allows the property to pass to the surviving spouse without court action.

### Let's illustrate how each of the above works:

1. You and your spouse own a rental house that you purchased for \$200,000.
2. Assume that your spouse dies and the house appraises and sells for \$500,000.
3. The capital gain for joint tenancy would be \$150,000 (\$500,000 less ½ of 200,000 and ½ of 500,000).
4. The gain for community property and community property with right of survivorship would be zero (\$500,000 less all of \$500,000 stepped-up basis!).
5. Assuming federal and state tax rates of 15% and 9%, there would be a combined savings of about \$36,000 in taxes. Not bad for a simple, innocent-looking plan ☺.

Bottom line: Consider transferring deeds from joint tenancy and community property to community property with right of survivorship. Combine the benefits of ease of transfers on your spouse's death and lower capital gains when you sell your properties.

Always consult your lawyer before making any decision. Good day.