Fidelity National Title

Community Property and Right of Survivorship

AFTER JULY 1, 2001 HUSBANDS AND WIVES OWNING REAL PROPERTY IN CALIFORNIA CAN OPT TO TAKE TITLE IN THE FORM OF COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

Community Property with Right of Survivorship has the same attributes as the traditional community property form of title but, like joint tenancy, has the additional attribute of the right of survivorship. When a husband and wife hold title as Community Property with Right of Survivorship, the full interest in the property will vest, by law, in the surviving spouse immediately upon the death of the first spouse. Title insurers will be able to vest title free and clear of the deceased spouse's interest merely by the recordation of an affidavit similar to the one used to clear the interest of a deceased joint tenant.

The survivorship feature will, in most instances, avoid the lengthy escrow delays caused by probate proceedings and other legal actions often associated with the traditional community property form of title. Spouses will also have the ability to unilaterally sever the right of survivorship in the same manner that a joint tenancy is severed. Severance of the right of survivorship may result in the property being vested in the traditional community property form.

As with any form of title, there are tax and other legal consequences that must be considered by husbands and wives choosing to take new title in the new form. The decision to take title in the form of Community Property with Right of Survivorship should not be made until parties have consulted with their attorney and tax advisor.