Joint Tenants vs. Community Property

Fast Fact #27

Holding title as joint tenants or as community property involves a multitude of issues to be dealt with. Here are two distinguishing features between taking title as joint tenants or community property, that most people are concerned with.

- When title is taken as joint tenants and one spouse dies, the surviving spouse automatically receives the property. This is called a right of survivorship. (Although the property does not go through any probate proceedings, the surviving spouse must still file an affidavit of death of joint tenant to remove the deceased's name from the deed.)

- When title is taken as community property however, and one spouse dies, there is no right of survivorship and the surviving spouse does not automatically receive title to the property. If the deceased spouse died without a will, the deceased spouse's interest in the community property would go to the surviving spouse. If there was a will, the deceased spouse's interest would be handled as outlined in the will. In other words, each spouse has ownership of their half of the community property and can leave it by will to their surviving spouse or any other third party.

- One way of looking at the death scenario is that joint tenancy has more certainty and community property has more flexibility.

The tax consequences has been a little more blurred as of late but basically the issue is as follows:

- If property is joint as joint tenants, the tax basis of the deceased spouse's half interest would be "stepped-up" to the fair market value at the time of his/her death. The tax basis of the surviving spouse's half interest would remain at its original basis.

For example: Husband and wife purchased their house for $100,000 with each spouse's tax basis at $50,000. At the date of Husband's death, the property's fair market value was $200,000. Since they held the property in joint tenancy, Wife automatically received Husband's half interest upon his death.

- Husband's half interest tax basis (originally $50,000) is "stepped-up" to the fair market value at his death (i.e. $100,000). Wife then has property worth $200,000 with a tax basis of $150,000 (her original $50,000 basis plus her deceased husband's stepped up basis of $100,000). If the property were sold for $200,000, there would be $50,000 of taxable gain.

- If title is taken as community property, however, the entire property receives a "stepped-up" basis to the fair market value at the date of one spouse's death.

- For example: Assume the same $100,000 purchase and $200,000 value at date of death and further assume Husband's willed his interest to Wife. Wife's original $50,000 basis gets stepped-up along with Husband's original $50,000 basis to the current $200,000 fair market value. Wife then has property worth $200,000 with a basis of $200,000. If the property were sold for $200,000, there would be no taxable gain.