

Common Ways of Holding Title

for the State of Washington

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Title to real property may be held by a single individual or entity, known as Sole and/or Separate Ownership, or by two or more individuals and/or entities known as Co-Ownership. Following is a brief list of common ways to hold title. Ownership and tenure of title varies by state. Remember, it is important to distinguish the proper way to hold title to your property. You may want to consult with your Attorney or Tax Advisor for what form suits your particular circumstance and needs.

SOLE OWNERSHIP

Sole ownership may be defined as ownership by an individual person or an individual entity that is capable of acquiring title (see below). Examples of common ways of vesting title in a sole ownership are:

1. A Single Person:

A person who is not married or in a registered domestic partnership may be identified on the deed as a single man, single woman or single person. For example: *“John Buyer, a single man.”*

2. A married person or registered domestic partner as a separate estate:

A married person or registered domestic partner who wishes to acquire title in his or her name alone may be identified on the deed as receiving title as his or her separate estate. Example: *“Amy Buyer, a married woman, as her separate estate.”*

Note: The title company insuring the title of a married person or registered domestic partner as a “separate estate” will require the spouse/partner of the party acquiring title to specifically disclaim or relinquish (usually by quit claim deed) any right, title or interest in the property. This establishes that both spouses or both domestic partners want title to the property to be conveyed to one spouse/partner as that person’s sole and separate property.

CO-OWNERSHIP

Co-ownership is defined as ownership by two or more persons, two or more entities capable of acquiring title, or a combination of persons and entities. Examples of co-ownerships are:

1. Community Property:

Washington is one of 9 community property states. Property vested as community property is property owned together by married persons or domestic partners. In Washington, real property conveyed to a married person or a person in a registered domestic partnership is legally presumed to be community property. Exceptions to the rule include properties acquired as separate property by gift, bequest or by agreement (see Sole Ownership example 2 above). Property vested as community property is owned equally by the spouses or domestic partners. Both parties must sign all agreements and documents transferring the property or using it as security for a loan. Upon the death of a spouse/partner, the deceased’s ½ share of the community property immediately transfers to the surviving spouse/partner. Although there is a presumption of community property in Washington, the title company may ask for a will or community property agreement, if any, to confirm that the property was in fact held as community property rather than separate. The deed by which title is vested as community property will commonly identify the parties as a married couple or as registered domestic partners. Examples: *“Susan Doe and Jane Doe, a marital community;”* or *“John Buyer and Amy Buyer, husband and wife.”*

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2. Tenancy in common:

Tenancy in common is a form of vesting title to property in which two or more persons or entities or a combination of persons and entities hold fractional ownership interests in the title to the whole property. The fractional interests may be unequal and may arise at different times. Each co-tenant may mortgage, sell, lease or bequeath his/her share of the property with no effect on the interest of the other co-tenants. Examples: "John Buyer, a single person, as to a 1/4 interest and Investment, LLC, a Washington limited liability company, as to a 3/4 interest;" or "Susan Doe, a single person, as to a 70% interest and John Buyer and Amy Buyer, husband and wife, as to a 20% interest, and Sophia Purchaser, a registered domestic partner as her separate estate, as to a 10% interest."

3. Joint Tenancy with Right of Survivorship:

A much less prevalent form of co-ownership is joint tenancy with right of survivorship. Joint tenancy is a form of vesting title in which the property is owned in equal shares by two or more persons (joint tenants), who may or may not be married. It provides that, on the death of a joint tenant, the deceased's interest is automatically transferred to the surviving joint tenant(s). The creation of a joint tenancy with this "right of survivorship" requires that title be acquired in equal shares, at the same time, by the same conveyance instrument that must include an express declaration of the intention to create a joint tenancy. A sole owner may convey to himself/herself and others to create a joint tenancy. A joint tenant's interest may be sold, but the purchaser does not acquire the interest of the seller as a joint tenant. Instead, the purchaser will only have title to a fractional interest as a tenant in common. Example: "John Buyer, a single person, and George Buyer, a single person, as joint tenants, with right of survivorship, and not as tenants in common."

Note: If a married person or a registered domestic partner enters into a joint tenancy that does not include their spouse/partner, the title company insuring title may require the excluded spouse/partner to specifically consent to the joint tenancy.

COMMON ENTITIES THAT MAY ACQUIRE TITLE

1. A Corporation*:

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

2. A Partnership*:

A partnership is an association of two or more persons who can carry on business as co-owners, as governed by various state laws. A partnership may hold title to real property in the name of the partnership.

3. Trustees of a Trust*:

A Trust is an arrangement whereby legal title to property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries. A trust is generally not an entity that can hold title in its own name. Instead title is often vested in the trustee of the trust. For example: "John Buyer trustee of the Buyer Family Trust."

4. Limited Liability Companies (LLC)*:

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation its existence is separate from its owners.

*In cases of corporate, partnership, LLC or trust ownership - required documents may include corporate articles and bylaws, partnership agreements, LLC operating agreements and trust agreements and/or certificates.



IMPORTANT NOTE:

How title is vested has important legal consequences and tax consequences. The tax consequences may be different for same sex or legally related couples. You may wish to consult an attorney or tax advisor to determine the most advantageous form of ownership for your particular situation. Rev. 2016.