

COMMON WAYS OF HOLDING TITLE IN OREGON



The following information is provided for informational purposes only and is not intended to replace legal or expert advice. There are significant tax and legal implications on how to hold title. Please consult your attorney or tax consultant for specific guidance on what is right for you or your clients.

INDIVIDUAL OWNERSHIP

In Oregon, one may hold title to real property in their individual name, regardless of whether they are married. If the sole title holder is married at the time of their death, the real property will transfer in accordance with his or her will, or if there is no will, it will transfer in accordance with the laws of intestate succession. See, ORS Chapter 112, as amended by Chapter 42 Oregon Laws 2016 (HB 4102). *(Example: Sam Buyer, an individual)*

TENANCY BY THE ENTIRETY

A conveyance to a married couple automatically creates a “tenancy by the entirety” unless the deed “clearly and expressly declares otherwise”. See, ORS 93.180(1)(b). This means if one spouse dies, then the surviving spouse automatically inherits the deceased spouse’s ownership interest. In Oregon, individual spouses can technically own property separately from their spouse; however, in the context of divorce, property owned by a spouse individually may be considered by a judge who is determining property division. *(Example: Sam Buyer and Billie Buyer, tenants by the entirety)*

TENANCY IN COMMON

ORS 93.180(1)(a) provides that a conveyance of land to two or more unmarried persons creates a tenancy in common. Ownership by “tenants in common” means that as each co-owner dies, their interest goes into the decedent’s own estate for distribution to his or her heirs, or the person(s) designated in the will. This is different from ownership which carries a right of “survivorship”, where the decedent’s interest automatically goes to the surviving co-owners, and not into the decedent’s estate. Unless the deed of conveyance “clearly and expressly declares” that the grantees are to hold title with the right of survivorship, it will be presumed they hold title as tenants in common. *(Example: Sam Buyer and Billie Buyer, as tenants in common)*

SURVIVORSHIP ESTATE

A “right of survivorship” means that as between two co-owners, upon the death of one of them, the survivor acquires the decedent’s share and therefore owns 100% of the property, as the sole owner. If there are multiple co-owners, all holding a right of survivorship, as each owner dies, the remaining survivor(s) jointly acquire(s) the share of the decedent. Ultimately, the last survivor will end up owning 100% of the co-owners’ interest that predeceased him or her. *(Example: Sage Smith, Blane Brown and Ash Anderson, with rights of survivorship)*

REGISTERED DOMESTIC PARTNERS

Domestic partners may own property in the same manner as a married couple (with rights of survivorship unless the deed clearly expresses otherwise). ORS 106.310 provides that a “Domestic Partnership” is a civil contract entered into between two persons of the same sex who are at least 18 years of age, and one of whom is an Oregon resident. In order to qualify as “domestic partners,” a couple must properly register their domestic partnership with the appropriate county clerk.(HB 4102). *(Example: Alex Buyer and Skyler Smith as Oregon registered domestic partners with the right of survivorship)*

ENTITY

Some people choose to hold title to real estate in the name of a legal entity, other than in their own individual name. Certain entities, such as corporations or limited liability companies, have an indefinite duration, i.e. they generally last as long as they are legally recognized by the state of their creation. Other entities, such as partnerships and joint ventures, if they are composed of individuals, last only so long as the life of the last participant, or until the entity is dissolved, whichever first occurs. *(Example: Happy Enterprises LLC, an Oregon Limited Liability Company)*

REPRESENTATIVE CAPACITY

Ownership can be held in the name of the person(s) acting in the capacity as the legal representative of the actual owner. Ownership in a representative capacity occurs in various situation and includes a personal representative in a probate case; a conservator or guardian in a protective proceeding; a trustee of a trust; and a trustee in bankruptcy. *(Examples: Jerry Jones, Personal Representative of the Estate of Corey Campbell, deceased / or Jerry Jones, Trustee of the Corey Campbell Trust)*