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Sometimes we find our clients are not prepared to make decisions on how they intend to hold title to their property when asked at the time of closing. This is an important legal decision as it bears on legal ownership and on transfer in the event of death. Real estate, escrow and title professionals cannot recommend a specific form of ownership, as this would constitute the practice of law. These professionals may only identify the many methods of ownership.

In Oregon, title to real property can be held in several different ways.

The principal types of ownership are:

- **Fee Simple Absolute;**
- **Tenancy in Common;**
- **Survivorship estate; and**
- **Life Estate**

**FEE SIMPLE ABSOLUTE**

If you own property solely in your name, you own all the rights to that property. This type of ownership is called **Fee Simple Absolute**. If you want to transfer property that is solely in your name upon your death, you must do so by a will or trust. If the individual is married, their spouse has no rights in the property during the lifetime of the owner.

**Tenancy in Common**

If you own property with a person other than your spouse, you own that property as a **tenant in common** unless a deed or other document states otherwise. A tenant in common owns an undivided interest in the entire property (such as one-half, one-third or a one-fifth interest). This interest can be sold or transferred to others through a will or trust; if you are a tenant in common; you may name a specific person or persons in your will to receive your interest. The person receiving the property will then hold your interest in the property with the other tenants in common. Individual persons, corporations, Trusts, LLCs, Estates, may all hold title together as tenants in common.

**Survivorship Estates**

A survivorship interest assures that when one owner dies, the remaining co-owner(s) will automatically receive the deceased owner's share of the property through a survivorship estate.

**TENANTS BY THE ENTIRETY/MARRIED COUPLE:** Common Law, the basis for Oregon law provides that a conveyance to a married couple is presumed to create a tenancy by the entirety which is a survivorship estate as between the two parties. The title passes automatically from a deceased party to the survivor without the need of a Probate. A tenancy by the entirety may not be extinguished by one spouse deeding to a third party. If, for instance, the husband deeds to a

third party, such grantee, “steps into the shoes” of the husband and actually has the same rights as the wife. Thereafter the extent of the ownership of the grantee will depend upon whether or not the husband survives the wife. If the husband out lives the wife his grantee takes all, but if the husband dies first, his grantee takes nothing and the wife is the owner free from any claim of the husband’s grantee.

Married couples who do **not** wish to hold title as tenants by the entirety must make that intent clear on the vesting deed; common language used to accomplish this runs along the lines of: “husband and wife, as tenants in common” or “not as tenants by the entirety but as tenants in common”. Most commonly, spouses divide their interest in a property in this manner for estate-planning purposes.

**SURVIVORSHIP ESTATE/NON MARRIED PARTIES:** Two or more individuals may take title in a survivorship estate. Friends, relatives and business partners use this form of ownership when they want to own property jointly and have the property pass to the survivor(s) on death. Property that is held subject to a survivorship interest cannot be transferred by the will of the party who dies first. If you own property in this way and want to pass that property to a particular person or entity, you should contact an attorney for advice. Title must have been acquired at the same time, by the same conveyance and the document must expressly declare the intent of the parties to create the survivorship estate. Language typically used to indicate that intent is “not as tenants in common, but with the right of survivorship”. As with the tenancy by the entirety, the survivorship cannot be extinguished by one party deeding to an outsider; all parties must deed out to extinguish the survivorship estate.

**OREGON DOMESTIC PARTNERSHIPS:** Oregon House Bill 2007 provides that persons of the same sex who comply with the registration provisions are afforded the same privileges, immunities, rights and benefits afforded to married person. The Act does not address in specific terms such matters as holding title to real estate and inheritance of real estate. As with any transaction it is important to know whether two or more individuals intend to take title with or without the right of survivorship. Until the Act is clarified, it is prudent for a deed to RDPs to state expressly the intent for survivorship or not.

Some preferred vesting clauses (Note that “Oregon” must appear in the vesting):

1. A and B, as Oregon registered domestic partners with right of survivorship;
2. A and B, as Oregon registered domestic partners with right of survivorship and the privileges, immunities, rights, benefits and responsibilities under Oregon law of tenants by the entirety;
3. A and B, Oregon registered domestic partners as tenants by the entirety or, if not recognized, with right of survivorship;
4. A and B, Oregon registered domestic partners as tenants by the entirety or, if not recognized, as tenants in an estate with the survivorship and other attributes of a tenancy by the entirety

Registered DP’s from other states do not have recognized rights in Oregon.

### **Life Estate**

A life estate is usually created to protect a person’s right to live on property and, on that person’s death, have it pass on to another. For example, if you want to give your property to a friend or your children, but you want to live on that property or receive income from it until your death, you can create a life estate. You would do so by deeding the property to whomever you want to have upon your death and reserving a life estate to yourself. A life estate is extinguished by the demise of the party holding the life estate or by that party terminating the life estate by deeding out.

## **Entities**

A recognized legal entity may hold title to real property. Examples are Partnerships (general or limited); Limited Liability Company or Corporation. The grantees name should be exactly as registered with the State of Oregon or other state where the entity was created.

## **Representative Capacity**

Title to real property may also be held by an individual or entity in their capacity acting on behalf of others – Personal Representative of an Estate; Conservators, Trustee of a Trust; Trustee acting on behalf of a Bankruptcy debtor. A Trust in and of itself is not a recognized legal entity capable of holding title to real property, but is instead held by the person named as “Trustee”, to be held and managed by that person for the benefit of the people specified in the trust agreement, called the beneficiaries.

## **Minors**

No transfer of title to real property to a minor should be undertaken without first seeking advice from a qualified legal professional to address all options available for such transfers. Although minors may be deeded real property, they may *not* convey the property while they are minors.

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