

# Property Ownership, Real Property Transfers, and Taxes

Chapter

6



Find definitions for these terms (indicated in **bold**) in the glossary:

Bargain and sale deed  
Consideration  
Deed  
Fee Simple Absolute;  
Joint tenancy  
Power of attorney  
Quitclaim deed  
Real property  
Remainder interest  
Special warranty deed  
Tenancy by the entirety  
Trust  
Warranty deed  
Will

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## In This Chapter

- SECTION 6-1 **Types of Property Ownership**
  - SECTION 6-2 **Transferring Property**
  - SECTION 6-3 **Basic Tax Matters**
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## 6-1 **Types of Property Ownership**

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In Oregon, title to **real property** can be held in several different ways. The way title is held is important because it affects what happens to the property in your lifetime and upon your death. Knowing what type of property ownership you have will help you understand your rights to the property.

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.

### **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 a 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. Legal action may be required for tenants in common who cannot agree on how to sell or manage their property.

## Survivorship Estate

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.

A husband and wife usually hold property together with this right of survivorship through a **tenancy by the entirety**. Tenancy by the entirety means that if one spouse dies, his or her interest will automatically go to the surviving spouse. Married couples who do not want this to occur should hold title as tenants in common instead.

You can hold title with a survivorship interest with someone other than your spouse in a **joint tenancy**. 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 you want to pass that property to a particular person or entity, you should contact a lawyer for advice.

Creating a survivorship interest requires the specific titles (joint tenancy, tenancy in the entirety) be used in the **deed, trust, or will**.

There are risks in creating survivorship interests in both real and personal property. For example:

- If you name someone as a joint tenant with the right of survivorship on a bank account, that person can take part or all of the money out without your permission. (*See Chapter 7 for more information on joint accounts.*);
- Survivorship interest may cause the property to go to someone other than your intended heirs; and
- A creditor of joint tenancy can take all or part of the property to pay that person's debts.

You should talk to a lawyer about the advantages and disadvantages before creating a survivorship interest.



See Chapter 7  
for more  
information on  
joint accounts.

## 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 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 it on your death and reserving a life estate to yourself until your death.

A life estate also may be created by a will. For example, suppose you want your friend, Harry, to own your property. When he dies, you want the property to pass to your brother, Bill. You can let Harry keep the property until his death by creating a life estate in your will. On Harry's death, you can have the property go to Bill. Bill's interest is then called a **remainder interest**.

**NOTE:** There are many ways that a person can hold title other than those described above. If you have any question about the nature and extent of your interest in a particular piece of property, or if you want to create one, you should contact a lawyer.

## 6-2 **Transfer of Your Ownership Interest**

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You can transfer your interest in your house and other real property to another person by:

- Selling the property;
- Giving it away during your lifetime; or
- Giving it away upon your death through a will, a trust agreement (such as a living trust), or a survivorship estate.

## Property Sale

Property is usually sold for cash or for installment payments (money paid over a period of time). The balance due is secured by a mortgage, trust deed, or land sale contract. Each of these ways to secure the transfer of property has special characteristics.

Before you choose between a mortgage, trust deed, or land sale contract, ask your attorney or real estate adviser to explain the differences. Also, find out how those differences affect your particular transaction. Unless you are familiar with real estate transactions under Oregon law, you should not try to create your own legal documents. Title documents should be prepared only by a lawyer or title company.

## Deeds

If you want to transfer your interest in real property, you must do so in writing. The document used to transfer your interest is called a deed.

There are four types of deeds in Oregon and each transfers property differently. These are:

- **Warranty deed;**
- **Special warranty deed;**
- **Bargain and sale deed;** and
- **Quitclaim deed.**

A **warranty deed** expressly warrants that title is good. This means that you will guarantee you own the entire property free and clear except for any conditions specifically listed in the deed.

A **special warranty deed** is most often used in fulfillment of a land sale contract and is similar to a warranty deed except the person selling only warrants their own actions.

A **bargain and sale deed** transfers the title or interest you have at the time of the transfer or later acquire. However, it does not give any warranty that your title is good.

A **quitclaim deed** transfers property but does not warrant that title is good. This deed is also referred to as a deed without covenants.

If you intend to give property to another person as a gift, use a bargain and sale deed. You may choose to use a warranty deed if you pay a title company to review the title to your property and provide title insurance.

### Steps to Transfer

To transfer real property to someone by deed, you must accomplish each of the following:

1. Complete the deed properly;
2. Sign it in front of a notary public; and
3. Give it to the person you want to receive the property.

A deed is not a will and does not legally operate like a will. To give property to someone on your death, you must set up a survivorship estate by deed (as discussed before), set up a trust, or transfer your property through your will.

There are a few practical matters you should know about completing a deed:

- If the property is located in a subdivision, it must be legally described by lot and block numbers in the deed.
- If the property is not in a subdivision, it must be described by a method called “metes and bounds” or by a sectional description. A tax lot number or street address is not enough.
- The deed must state what was given or paid (called **consideration**) for the property; generally, the dollar amount paid for the property. If the property is a gift, the deed can say that the consideration is love and affection.

- Never sign a deed someone else has prepared for you unless you know and understand the outcome.
- The deed must be signed or acknowledged before a notary public.
- Once a deed has been received or delivered, you must record it with the county clerk or recorder for the county where the property is located.

All deeds, mortgages, contracts, and other writings about ownership interests in real property should be recorded. Recording protects the buyer and the seller. For instance, if you are the buyer, you could lose your title to the property if the deed is not recorded and the property is sold again by the same person who transferred it to you. An unrecorded deed could create problems with transferring the property in the future.

There are potential consequences for creating a survivorship interest in a deed such as:

- Signing a deed transferring real property to yourself and someone other than your spouse with the right of survivorship constitutes a gift. This kind of transfer may require you to file federal and state gift tax returns.
- Once the deed is signed, you cannot take the property back. You will have trouble selling or mortgaging the property without the other named person's agreement and signature.
- Property held subject to a survivorship interest passes to the survivor *even if your will names someone else to receive property in your will.*

## Power of Attorney for Real Property

A power of attorney is a written document used to give another person the same legal authority as you have for yourself. A power of attorney can be general or specific.

A **general power of attorney** gives authority to another person to act on your behalf in all your affairs. A **specific power of attorney** (also called a limited power of attorney) allows a person to act on your behalf only on



See Chapter 7  
for more  
information  
on power  
of attorney  
documents.

specific issues, such as selling a business or a piece of property. Special limitations can be placed on a general power of attorney as well, such as prohibiting the sale of particular property. The power of attorney should limit the authority of the agent to put property in his or her own name only as an agent for you, not as the sole owner of the property himself or herself.

If you want another person to sell or transfer your real property, you should specifically say so in the power of attorney. *The power of attorney must be notarized and recorded with the County Clerk or Recorder.*

If you create a power of attorney but decide later you do not want the person appointed to act for you, you must revoke the power of attorney in writing. The revocation should be notarized and recorded where the power of attorney was recorded. The power of attorney will automatically be revoked upon your death.

## Gifts

A **gift** is a voluntary transfer of personal or real property. The person who makes the gift, called the **donor**, receives nothing in return. The donor must intend to make the gift. The gift must be delivered, and the person who is offered the gift must accept it. You cannot make a gift that is to take effect on your death unless you put it in a will or a trust.

### **Gifts During Your Lifetime**

Most gifts are made during the lifetime of the donor. Once this type of gift is given, it cannot be taken back unless the person receiving the gift agrees and actually returns it. However, if you are the donor and give a gift solely because you think you are terminally ill and are going to die, you may take it back when you do not die.

Often, older adults want to give their property away for various reasons such as:

- To give property to a deserving friend or relative;
- To avoid payment of estate taxes;
- To preserve and protect their estate before incurring large medical bills so there is something left to give away; or
- They are asked to do so by friends or relatives.

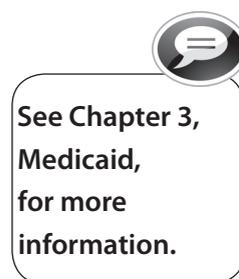
Some gifts may create tax problems for the former owners or recipients.

Heirs and others may claim an interest in the property. Also, most transfers for less than fair market value make the donor and his or her spouse ineligible for Medicaid benefits that may be needed to help pay for long term care.

**Do not try to accomplish estate planning or preservation of your estate without first contacting a lawyer.**

A gift must be delivered to be valid. For example, suppose you want to give a special ring to your niece. If you put a note on it saying, “This ring is for my niece when I die,” the gift will not be valid because the ring was not delivered.

If you want to give something that is very large, such as a piano, you may do so by **symbolic delivery**. Symbolic delivery occurs when you give something that represents what you actually want to give, such as a written description of the item or a model of it. Sometimes a person may be too sick to give the actual gifted item. In this situation, a **constructive delivery** of the gift will work. A constructive delivery means the person receiving the gift is given the means to obtain the gift. For example, that person may be given the keys to a safety deposit box or to a car. If there is a dispute, the court will decide if the donor intended to make a gift, if the gift was delivered, and if the gift was accepted.



## 6-3 Basic Tax Matters

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### Sale of Residence Tax Exemption

**Capital gains tax** is a tax on the difference between the original purchase price of an asset and the selling price of that asset. The sale of your primary residence is not subject to a capital gains tax so long as the taxable gain does not exceed \$250,000 for individuals or \$500,000 for married couples.

To exclude gain on the sale of your house, you must have lived in it for at least two of the five years preceding the sale of your house.

### Property Tax Deferral

An Oregon homeowner who is disabled or who is at least age 62 may defer paying property taxes on his or her residence if they qualify for a property tax deferral.

To qualify for this tax deferral:

- You must be totally and permanently disabled or age 62 by April 15th of the year you file your application;
- You must have a recorded deed to the property, or you must be buying the property under a recorded instrument of sale. You are not eligible if you only have a life estate interest in the property;
- You must live on the property for at least five years before April 15th of the year you apply for the program. This restriction does not apply if you are absent for health reasons. In this case, a doctor's statement must be sent to the Department of Revenue;
- You must show proof of homeowner's insurance that covers fire and other casualties;
- The real market value of the home cannot be more than 100% of the county median (with some graduated allowances based on years lived on the property);
- Your total net worth cannot exceed \$500,000 not including the value of the home, life insurance policies, and tangible personal property.



The rules changed in 2012 making it more difficult to qualify.

It does include all other real property, cash, checking and saving accounts, bonds, and other investments less debts;

- Your total household income for last year (2011) must be less than \$39,500. This amount changes annually. Household income includes both taxable and non-taxable income, including Social Security and pensions; and
- You don't have a reverse mortgage on the property. People who are already receiving this deferral and have a reverse mortgage will continue to receive it until 2012.

After the Oregon Department of Revenue has approved your application, you must tell your mortgage holder that the state will be paying your taxes. Your application must be filed with your county assessor between January 1st and April 15th to defer the taxes that would be billed to you the next fall. You must re-certify every two years and meet all the qualifications.

Applications and income worksheets are at the assessor's office. The Oregon Department of Revenue will not pay delinquent taxes.

You must pay the deferred taxes (plus 6 percent compound interest per year on the deferred taxes) when any of the following occurs:

- The taxpayer getting the deferral dies; the heirs have until August 15th of the next calendar year. (A surviving spouse may continue to defer past and future taxes);
- The property is sold or there is a change in ownership. For example, if you deed your property to your survivors through a life estate or trust, you will be disqualified from the program;
- You stop living permanently on the property. However, temporary absences due to vacation, travel, or illness do not disqualify you. If you move for medical reasons, you must submit a doctor's statement to the Department of Revenue; or
- You obtain a reverse mortgage on the property.

In addition to a deferral of property taxes, you may be able to defer payments on certain "special assessments" against your property. Such assessments include those made by city, county, and sanitary districts for streets, sidewalks,

sewers, and water. The requirements for deferral of special assessments are very similar to those for deferral of real property taxes. You can get information about deferrals from the Oregon Department of Revenue. (See Chapter 14, Resources.)



See Chapter 14, Resources, for more information.

## **Property Tax Assessments and Challenges**

Each year, Oregon counties notify property owners of the tax value of their properties. The county assessor uses a standard method to determine the value. You can ask for the tax value to be changed if you find the assessor made an error or if you think the assessment is too high because it didn't take certain factors into account. You can speak informally with the assessor's staff first; if negotiations are unsuccessful, you must file a petition with the county board of property tax Appeals to  a formal hearing. You can petition for a hearing between the time you receive your tax statement and December 31st of the year the assessment is made and you are billed. Information on how and when to file an appeal is included with the property tax statement. You may want to seek legal advice before starting this process.

## **Veterans' Property Tax Exemption**

Some low-income veterans—including some members of the Oregon National Guard—who served during wartime, or their surviving spouses or registered domestic partners who have not remarried, are entitled to an exemption for the first \$17,910 (for 2012) of property value, if they own the home in which they live. This amount changes annually by 3%. For certain veterans with limited income and service-connected disabilities, or for their surviving spouse/registered domestic partner, the exemption is \$21,493. The person seeking the exemption must live in the home for which the exemption is sought.

Contact the tax assessor in your county for more information. The application must be filed before April 1st of each year.

If you feel that you have been wrongly denied the veterans' property tax exemption, you can appeal to your county government. Ask your assessor's office for information about the appeals process.