

## CHAPTER 6

# Property Ownership, Transfers of Real Property, and Taxes

This chapter begins with a discussion about the various types of property ownership. It is very important to understand the ways that you can own property. With this information, you will know what rights you have to the property during your lifetime and how the property will be transferred upon your death.

The types of ownership discussed are sole ownership, tenancy in common, survivorship interest and life estate. Knowing how you own property will help you decide how to transfer it to others, whether by selling it or by giving it away through a will, trust or survivorship interest. This chapter also explains deeds and the different types you can use to transfer your property. In addition, you will find out how to give property legally to someone as a gift.

If you wish to give someone else the power to transfer your property for you, you may use a power of attorney, also explained in the chapter.

Finally, this chapter discusses the sale-of-residence tax exemption and property tax deferrals available to older adults, as well as steps to take to ensure that your property taxes are fair.

---

## Types of Ownership

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.

The principal types of ownership are:

1. **Sole ownership;**
2. **Tenancy in common;**
3. **Survivorship estate; and**
4. **Life estate.**

You should know what type of ownership you have. The type of ownership will tell you what your rights are concerning property you fully or partially own.

## CHAPTER 6

### Property Ownership, Transfers of Real Property, and Taxes

---

---

#### Sole Ownership

If you own property solely in your name, you own all the rights to that property. 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 another person, by law you own that property as a tenant in common unless a deed or other document states otherwise. A tenant in common is a person who owns an undivided interest in the entire property, such as a one-half, one-third or one-fifth interest. This interest can be sold to others. It also may be 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.

Tenants in common who cannot agree on how to sell or manage the property usually have to go to court to settle their differences

---

#### Survivorship Estate

In Oregon, persons may hold property together with a **survivorship interest**. 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. For example, a husband and wife usually hold property together with this **right of survivorship**. This particular form of ownership between husband and wife is also called 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. 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 special words when used in a **deed, trust or will**.

There are risks in creating survivorship interests in both real and personal property; for example:

1. 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 4 for more information on joint accounts.);
2. Survivorship interest may cause the property to go to someone other than your intended heirs; and
3. Sometimes a creditor of the other person you named on your property with a survivorship interest can take all or part of that property to pay debts.

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

---

## Life Estate

A life estate usually is 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 would want to 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 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**.

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

The title to real property is held in one of four ways:

- Sole ownership
- Tenancy in common
- Survivorship estate
- Life estate

---

## Transfer of Your Ownership Interest

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

1. By a sale;
2. By giving it away during your lifetime; or
3. By giving it away upon death through a will, a trust agreement (such as a living trust), or a survivorship estate.

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. The one you use should be chosen after you get sound legal advice.

Before you choose among a mortgage, trust deed or land sale contract, ask your adviser to explain the differences. Also, find out how those

## CHAPTER 6

### Property Ownership, Transfers of Real Property, and Taxes

---

In order to transfer your interest in real property, you must do so in writing with a document called a deed.

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. (Listen to Tel-Law topic 1201, “Buying and Selling Real Estate,” for more information.)

Often, older adults want to give their property away. The reasons for this may include:

1. They want to give property to a deserving friend or relative;
2. They want to avoid payment of estate taxes;
3. They want to preserve and protect their estate before incurring large medical bills so there is something left to give away; or
4. They are asked to 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. (See Chapter 2 for more information on Medicaid.) Do not try to accomplish estate planning or preservation of your estate without first contacting a lawyer.

---

## 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:

1. **Warranty deed;**
2. **Special warranty deed;**
3. **Bargain and sale deed;** and
4. **Quitclaim deed.**

Each of these deeds transfers property differently.

A **warranty deed** tells the person to whom the property is being sold or transferred that you are warranting the title. 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.

A **bargain and sale deed** transfers whatever title or interest you may 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**, on the other hand, transfers only the title you may have at the time of the transfer.

If you are going to give property to another person as a gift, you should 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.

You must give the deed to the person receiving the property. It does no good to fill out a deed, sign it and keep it in the desk drawer or other place for safe keeping. If you want to give your real property to someone, you must complete the deed properly, sign it in front of a notary public and 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 either set up a survivorship estate by deed (as discussed before), set up a trust, or set up a transfer of your property through your will.

Creating a survivorship interest in a deed has many possible legal consequences. Several consequences are:

1. If you sign a deed transferring real property to yourself and someone other than your spouse, and you and this other person have the right of survivorship, you may have made a gift. This kind of transfer may require you to file federal and state gift tax returns.
2. Once the deed is signed, you cannot take the property back. You will have trouble selling or mortgaging the property without the agreement and signature of the other person you have named on the deed.
3. The property held subject to a survivorship interest passes to the survivor. **Even if you name someone else to receive property in your will, a deed of that same property decides who receives it.**

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

1. The property must be legally described by lot and block numbers if it is located in a subdivision.
2. It must be described by a method called "metes and bounds" or by a sectional description if not in a subdivision. A tax lot number or street address is not enough.
3. The deed must state what was given or paid (called **consideration**) for the property. If the property is a gift, the deed can say that the consideration is love and affection.
4. Never sign a deed someone else has prepared for you unless you know and understand the results.
5. The deed must be signed or acknowledged before a notary public.
6. 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 you and the person receiving the property. 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 also could create problems with transferring the property in the future.

---

**CHAPTER 6****Property Ownership,  
Transfers of  
Real Property,  
and Taxes**

---

---

**Power of Attorney for Real Property**

A power of attorney is used to give another person the same legal authority as yourself. A power of attorney can be general or special. (See Chapter 4 for more information.)

A **general power of attorney** gives authority to another to act on your behalf in all your affairs. A **special power of attorney** (also called a limited power of attorney) allows a person to act on your behalf only on 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. You may want to make sure in a power of attorney that the agent has the authority 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 you sign. **The power of attorney must be notarized and recorded with the County Clerk or Recorder.**

If you make 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 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.

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. You cannot make a gift that is to take effect on your death unless you put it in a will or a trust.

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 gift 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.

## Sale of Residence Tax Exemption

There was a significant revision of the **capital gains tax** beginning in 1997. Capital gains tax is a tax on the difference between the original price of your house (plus improvements) and the selling price (assuming you sell your house for more than you paid). Sale of a house now is no longer 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. To qualify for this deferral:

1. You must be either totally and permanently disabled or 62 years old by April 15 of the year you file your application;
2. 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 have only a life estate interest in the property;
3. You must live on the property. This restriction does not apply if you are absent for health reasons. A doctor's statement must be sent to the Department of Revenue in this case;
4. Your total household income for last year (2005) must be less than \$35,000. This amount changes annually. Household income includes both taxable and non-taxable income, including Social Security and pensions; and
5. You must meet the annual household income test each year once you have been approved.

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 1 and April 15 to defer the taxes that would be billed to you the next fall. Applications and income worksheets are at your assessor's office. The Oregon Department of Revenue will not pay taxes you have not paid in the past when you apply.

After the first filing, you don't need to file an application for deferral each year. However, you must meet the annual income test.

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

## CHAPTER 6

### Property Ownership, Transfers of Real Property, and Taxes

---

1. The taxpayer getting the deferral dies. (If a spouse survives, he or she may continue to defer past and future taxes);
2. You sell the property or in some other way change the ownership. For example, if you deed your property to your survivors through a life estate or trust, you will be disqualified from the program; or
3. 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.

In addition to 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 Resources at end of chapter.)

## Property Tax Assessments and Challenges

Each year, Oregon counties notify property owners about the property tax value of their properties. The county assessor uses a standard method to determine what that value will be. If you find the assessor made an error in applying that method, or if you think the assessment is too high because it didn't take certain things into account, you can ask for the tax value to be changed. You can deal first informally with the assessor's staff; if negotiations are unsuccessful, you must file a petition with the county Board of Property Tax Appeals to get a formal hearing. You can petition for a hearing between the time you receive your tax statement and December 31 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. It is a good idea to get some 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 who have not remarried, are entitled in tax year 2006-2007 to an exemption for the first \$15,000 of property value, if they own the home in which they live. This amount changes annually. For certain veterans with limited income and service-connected disabilities, or for their surviving spouses, the exemption is \$18,000. Contact the tax assessor in your county for more information. The application has to be filed before April 1 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.

---

## Resources

See **General Resource List** for AAA/SPD offices, legal aid offices, OSB Tel-Law service and more.

---

### Oregon Department of Revenue

955 Center Street NE  
Salem, OR 97301  
503-378-4988 or 800-356-4222  
TTY: 800-886-7204  
www.oregon.gov/DOR

---

### Oregon State Bar Tel-Law Topics

1232 - Federal Tax Benefits for Persons Age 65 or Older  
1201 - Buying and Selling Real Estate  
503-620-3000 or 800-452-4776  
www.osbar.org

---

## Glossary of Terms

**Bargain and Sale Deed:** *A type of deed that transfers whatever title or interest you may have at the time of the transfer or gain later.*

**Capital Gains Tax:** *A tax on the amount that is the difference between the original price of a home (plus improvements) and the selling price (assuming you sold it for more than you paid).*

**Consideration:** *What was given or paid in return for property.*

**Constructive Delivery:** *Delivery in which the person receiving a gift is given the means of receiving a gift. For example, the person receives the keys to a safety deposit box or to a car.*

**Deed:** *A document used to transfer your interest in real property.*

**Donor:** *The person who makes a gift.*

**General Power of Attorney:** *See Chapter 4.*

**Gift:** *A voluntary transfer of real or personal property for nothing in return.*

**Life Estate:** *A type of ownership that protects a person's right to live on property during that person's lifetime. After the person's death, it passes to another.*

**Power of Attorney:** *See Chapter 4.*

**Property Tax Deferral:** *A benefit allowing senior homeowners aged 62 or older to delay paying property taxes. The taxes must be paid with interest when the owner dies, sells the property or moves, or when the property changes ownership.*

**Quitclaim Deed:** *A type of deed that only transfers whatever title or interest you may have at the time of the transfer.*

## CHAPTER 6

### Property Ownership, Transfers of Real Property, and Taxes

---

**Real Property:** *See Chapter 5.*

**Remainder Interest:** *A type of ownership interest in which your rights arise after someone else's rights end. (See life estate.)*

**Right of Survivorship:** *The right a person has to receive property when a co-owner dies.*

**Sole Ownership:** *A type of ownership in which you own property solely in your name, giving you all rights to that property.*

**Special Power of Attorney:** *Also called Limited Power of Attorney. Legal authority to perform a specific act of behalf on another. (See Chapter 4.)*

**Special Warranty Deed:** *A type of deed usually used in fulfillment of a land sale contract, similar to a warranty deed.*

**Survivorship Estate:** *An estate that arises when a person becomes entitled to property because he or she survived another person who had an interest in it.*

**Survivorship Interest:** *A present interest that may become a survivorship estate on the death of another.*

**Symbolic Delivery:** *A way to deliver a very large gift by giving something that represents the gift.*

**Tenancy by the Entirety:** *A form of ownership between husband and wife. If one spouse dies, his or her interest will automatically transfer to the surviving spouse.*

**Tenancy in Common:** *A type of ownership in which you own property with another person. If one owner dies, the property does not automatically transfer to the co-owner(s).*

**Trust:** *See Chapter 5.*

**Veterans' Property Tax Exemption:** *A benefit allowing some veterans who served during wartime, or their surviving spouses who have not remarried, to exempt part of the value of their homes from property taxes.*

**Warranty Deed:** *A type of deed that transfers all of your title or interest in the property and guarantees the title except for any conditions specifically listed in the deed.*

**Will:** *See Chapter 5.*