



SOME THINGS CHANGE  
SOME THINGS STAY  
THE SAME

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Member, Limited Practice Board



# SOME THINGS CHANGE, SOME THINGS STAY THE SAME

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- Lynden High School
- Western Washington State College
- 45-year veteran of the title insurance industry
- 3-time past President of the Washington Land Title Association; Current Co-Chair Legislative Committee; Member of Board of Directors since 1986
- Former Education Committee chair – American Land Title Association
- Member – Limited Practice Board

## SOME THINGS CHANGE, SOME THINGS STAY THE SAME

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- Transfer on Death Deed - TODD
- ALTA 2006 Commitment form vs 2016 ALTA Commitment form
- Conveying Community Property vs Separate property

TRANSFER ON  
DEATH DEEDS  
(TODD)

RCW 64.80



# TRANSFER ON DEATH DEEDS

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## WHAT IS TODD?

- The owner records a deed that states it is to become effective upon his/her death. When that occurs, the grantee becomes the legal owner automatically.
- Alternative to expensive estate planning for simple estates.
- Allows owners to retain control of their property
- Codified in RCW 64.80

# TRANSFER ON DEATH DEEDS

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## HOW DID TODD COME ABOUT?

Requested by the Uniform Law Commission.

Past products of that Commission:

- Uniform Commercial Code
  - Probate Code
- Partnership Code

## TRANSFER ON DEATH DEEDS

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- 27 States have enacted TODD legislation, each with their own variations
- Other area states with TODD legislation:

Alaska, Arizona, California, Oregon, Nevada, New Mexico,  
Colorado, Wyoming and Hawaii

## TRANSFER ON DEATH DEEDS

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### WHEN WAS THE ACT EFFECTIVE?

- Became effective June 12, 2014
- A TODD effectively transfers property to the Designated Beneficiary if it was recorded and the Transferor dies on or after June 12, 2014.



# TRANSFER ON DEATH DEEDS

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## TERMINOLGY

Beneficiary - person that receives property under a transfer on death deed

Designated Beneficiary - person designated to receive property under a transfer on death deed

Person - Individual, corporation, trust, joint venture, LLC, or a public corporation

Transferor - Individual (s) that makes the transfer

# TRANSFER ON DEATH DEEDS

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- WILL THE LPO BOARD CREATE AND APPROVE A TRANSFER ON DEATH DEED?
- IF NOT, MAY AN LPO PREPARE A TRANSFER ON DEATH DEED UNDER SPECIFIC WRITTEN INSTRUCTIONS?

# TRANSFER ON DEATH DEEDS

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- To: Limited Practice Officers
- From: Washington State Limited Practice Board
- On June 12, 2014, the Washington Uniform Real Property Transfer On Death Act (HB 1117, 2nd Engrossed Substitute) was enacted making it possible for a person to transfer real property through the use of a deed taking effect at the transferor's death (a "TOD deed"). The Act provides that for an otherwise legally effective deed to transfer property on a transferor's death the deed simply needs to state that "the transfer to the designated beneficiary is to occur at the transferor's death." LPO's should review the Act and familiarize themselves with its provisions and requirements. LPOs should remember, however, that a TOD deed is an estate-planning tool that should only be employed by transferors after consultation with an attorney, and that LPOs are not authorized to provide advice to transferors on the use of TOD deeds.
- If an LPO receives written instructions from a party or parties to a transaction indicating that they wish the LPO to prepare a TOD deed, there is nothing in APR 12 that would prevent the LPO from inserting the above-quoted language, verbatim, into an LPB approved deed form. The Board considers this situation to be similar to the modifications normally needed to use an LPB deed form to establish a joint tenancy, separate estate, or undivided interests. LPOs are nevertheless advised to review the situation with their management and/or legal counsel prior to agreeing to prepare a TOD deed.
- An issue has also recently arisen that raises concerns similar to those raised by the adoption of the Act. HUD (or a HUD vendor) now appears to be routinely requesting the insertion of additional language in the LPB approved form of deed for closings involving the sale of foreclosed property. If the parties to the transaction each agree in writing to the insertion of specific language, an LPO may insert the agreed upon language in the deed, verbatim, in accordance with the provisions of APR 12. Once again, however, the LPO is advised to seek the advice of their management and/or legal counsel if he or she has any questions related to the possible impact of adding the agreed language to the deed or a possible conflict between the warranties contained in the selected agreement deed form and the language requested to be added.
- Regards,
- Talia Clever, LPO Program and Law Clerk Program Lead Washington State Bar Association // 1325 4th Ave Ste 600, Seattle WA 98101

# TRANSFER ON DEATH DEEDS

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## REQUIREMENTS OF A TODD

- Must contain the essential elements and formalities of a properly recorded inter vivos deed;
- Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and
- Must be recorded in the public records in the county where the property is located BEFORE the transferor's death

# TRANSFER ON DEATH DEEDS

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## REQUIREMENTS CONTINUED

- All the requisites of the deed, except the present intent to convey the property to the designated beneficiaries.
- Property in more than one county - need to record in each county.
- May be executed by attorney in fact IF specifically authorized in the Power of Attorney.
- Mental capacity of grantor is the same for a will - must comprehend what is happening; nature and extent of property, natural objects of bounty, relationship of the elements

# TRANSFER ON DEATH DEEDS

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## WHAT IS NOT REQUIRED

- Notice, delivery or acceptance by the Designated Beneficiary during Transferor's life
- Consideration from the Designated Beneficiary

# TRANSFER ON DEATH DEEDS

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## WHO MAY BE A TRANSFEROR OR GRANTOR

- Only an individual may be a Transferor
- Multiple individuals may be Transferors on the same deed; all joint tenants; both spouses of community property; even different estate owners such a life and future estate together.
- A corporation, business trust, estate, trust, partnership, limited partnership, LLC, joint venture, etc. may NOT be a Transferor

## TRANSFER ON DEATH DEEDS

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A TODD MAY NOT BE USED TO EFFECTUATE A DEED IN LIEU OF FORECLOSURE



## TRANSFER ON DEATH DEED

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### DISTINGUISHING LANGUAGE OF A TODD:

“The Transfer to Designated Beneficiary is to occur at the Transferor's death”

# TRANSFER ON DEATH DEED

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## EFFECT OF A TODD DURING TRANSFEROR'S LIFE

- Prior to Grantor's death, does not affect the Grantor's creditors, encumbrances, liens, deed(s) of trust or other title matters;
- The Grantor may convey the property to another, may make any change to the title, may revoke, may replace with a different TODD and may encumber with a mortgage.
- Designated Beneficiary's creditors cannot attach the property.

## TRANSFER ON DEATH DEEDS

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- EFFECT OF A TODD DURING TRANSFEROR'S LIFE

- continued -

- Prior to the death of the Transferor, the recording of the TODD does not give the Grantee any rights, or any interest in the property.
- A judgment, divorce, bankruptcy or anything else related to the Beneficiary, cannot affect the property while the Transferor is alive

# TRANSFER ON DEATH DEED

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## TODD DOES NOT AFFECT:

- Interest of any owner, including Transferor, in the right to transfer or encumber the property
- Right of a Transferee even if they have notice of the TODD
- Does not affect the Transferor's or Designated Beneficiary's right to public assistance
- Does not create a legal or equitable interest in favor of the Designated Beneficiary

# TRANSFER ON DEATH DEED

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## REVOCAION OF TODD

- A TODD is revoked by the Transferor by the following:
  1. A later recorded TODD expressly revoking or is inconsistent with an earlier TODD
  2. Written, recorded revocation
  3. Later, recorded inter vivos conveyance
- Must expressly revoke the prior TODD\*
- Must be acknowledged after the TODD, and recorded before the Transferor's death in the county where the property is located.
- May not be revoked by will or by act

# TRANSFER ON DEATH DEEDS

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The statute indicates that express revocation is required:

RCW 64.80.080(1)(a)(iii) and (4):

- (1) Subject to subsection (2) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:
- (a) Is one of the following:
    - (iii) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
- (4) This section does not limit the effect of an inter vivos transfer of the property.

## THE DILEMMA

One portion says it must expressly revoke while the other seems to allow a later inter vivos transfer of the property. So, what is the effect of an inter vivos transfer that does NOT expressly revoke an earlier TOD deed. Which provision will control? The one that requires an express revocation or the one that does not limit the effect of an inter vivos transfer?

# TRANSFER ON DEATH DEED

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## REVOCACTION OF TODD

- continued -

- A TODD joined by multiple owners may be revoked by one alone, effective only as to the revoking party, and the TODD remains effective as to the other Grantors.
- A TODD related to a joint tenancy, or community property, must be revoked by all of the Grantors.
  1. During the life of both community property owners, both are required to revoke
  2. Upon death of one spouse/partner, the survivor may revoke.

## TRANSFER ON DEATH DEED

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### A TODD THAT IS SIGNED BY ALL TENANTS IN COMMON:

- When Grantor dies, the TODD is effective for the interest of that Grantor
- Does not affect the rights of the survivor tenant(s) in common
- The TODD remains in force to be operative at the death of the other Grantor tenant(s) in common
- The TODD may be revoked by any surviving Grantor, affecting only the share of the person revoking.



# TRANSFER ON DEATH DEED

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## EFFECT OF TRANSFERS BY JOINT OWNERS

A TODD that is signed by all joint tenants:

- When a Grantor decedent is survived by other joint tenants, the TODD is not yet effective.
- Take effect when last surviving joint tenant dies;
- Unless, surviving joint tenant(s) revoke.

## TRANSFER ON DEATH DEED

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- A TODD for Community Property that is signed by both spouse/partner:
  - When one Grantor dies while still married or a partner, and the other survives, the TODD is not effective to convey ANY interest
  - When second Grantor dies, the TODD is effective only with respect to the Grantor's interest at the time of death.

Note: The survivor Grantor may revoke the TODD prior to death

# TRANSFER ON DEATH DEED

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## EFFECT OF TRANSFERS BY JOINT OWNERS

A TODD for Community Property that is *only signed by one spouse/partner*:

- When the Grantor dies while still married or a partner, the TODD takes effect as to that person's interest in the Community Property.
- The TODD does not affect the interest of the surviving spouse/partner.

# TRANSFER ON DEATH DEED

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## WHEN GRANTOR DIES

- Grantee must be alive for the TODD to be effective
- If multiple Grantees, the share of the predeceased Grantee goes to other Grantee(s)
- At the time of the transferor's death, title to the property is transferred automatically to the beneficiary
- The Grantee takes subject to any conveyances, encumbrances, assignments, liens, or other interest in the property.
- The beneficiary receives only whatever interest the transferor owned at the time of death. In all ways, the TODD has no effect until the death of the Grantor

## TRANSFER ON DEATH DEED

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### WHEN GRANTOR DIES:

- A REET affidavit is required at the death of the Grantor.
- No Excise Tax is due at the death of the Grantor, except if the TODD was due to a contractual obligation of the decedent owed to the recipient of the property.
- The transfer legally occurs automatically - but a certified copy of the death certificate is recorded to perfect title.

## TRANSFER ON DEATH DEED

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### WHEN GRANTOR DIES:

- A beneficiary may disclaim the transferred interest. Then the TODD is completely ineffective.
- Just like after the death of a joint tenant, or a life estate beneficiary, the DSHA liens for medical care attach after the decedent has no real estate interest and does affect the Grantee's title
- Even if the TODD has stated warranties, there are none given.

# TRANSFER ON DEATH DEEDS

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## TITLE AND ESCROW CONSIDERATIONS

- Transaction involving a living grantor - TODD disclosed on Schedule BII as a note or exception but is NOT shown on policy.
- Grantor has conveyed the property to third party or recorded a revocation - not necessary to disclose the TODD on title report.
- Informed that TODD grantor is deceased, but no death certificate: Must require certified copy of death certificate BEFORE vesting in TODD's Grantee.
- Possible DSHA lien for medical services. Question regarding time to assert lien.
- State and Federal estate tax lien(s)
- Grantor's creditors

2016 ALTA COMMITMENT VS  
2006 ALTA COMMITMENT





## ALTA 2016 COMMITMENT

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The ALTA 2016 Commitment is a more streamlined version of the 2006 ALTA Commitment and contains important clarifications of the obligations between the title insurer, proposed insured and title issuing agents

## ALTA 2016 COMMITMENT

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The most significant revision is the incorporation of a “Notice.” The Notice expressly sets forth that the commitment is an offer to issue the specified title insurance policy and is not “an abstract of title, report of condition of title, legal opinion, opinion of title, or other representation of title.”

## ALTA 2016 COMMITMENT

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The Notice also states the procedures used by the Company to determine insurability are proprietary to the Company, were performed solely for the benefit of the Company and creates no extracontractual liability.

## ALTA 2016 COMMITMENT

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The Notice also states the Company's obligation is to the proposed insured identified in Schedule A and that the Company has no liability or obligation to any other person.

## ALTA 2016 COMMITMENT

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Page 1 also contains the Commitment to Issue Policy. Similar to the 2006 version it discloses that the commitment is effective as of the Commitment Date shown in Schedule A and only when the Proposed Policy Amount and name of the Proposed Insured is identified in Schedule A. Also, the Commitment terminates if the requirements have not been met within six months.

## ALTA 2016 COMMITMENT

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Pages 2 and 3 contain the Commitment Conditions and include new and expanded language.

No. 1 - Definitions

# ALTA 2016 COMMITMENT

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## No. 2

If all of the Schedule B, Part I - Requirements have not been met within the time period specified in the Commitment to Issue Policy, the Commitment terminates and the Company's liability and obligation end.

## No. 3

The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice
- (b) the Commitment to Issue Policy
- (c) the Commitment Conditions
- (d) Schedule A
- (e) Schedule B, Part I Requirements
- (f) Schedule B, Part II - Exceptions

## No. 4:

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

# ALTA 2016 COMMITMENT

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## No. 5 - LIMITATIONS OF LIABILITY

(a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:

(i) comply with the Schedule B, Part I - Requirements;

(ii) eliminate, with the Company's written consent, any Schedule B, Part II - Exceptions; or

(iii) acquire the Title or create the Mortgage covered by this Commitment.

(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment and had knowledge of the matter and did not notify the Company about it in writing.

(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.

(d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any

(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I - Requirements have been met to the satisfaction of the Company.

(g) In any event, the Company's liability is limited by the terms and provision of the Policy.



# ALTA 2016 COMMITMENT

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## No. 6 LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this commitment

(b) Any claim must be based in contract and must be restricted solely to the terms and provision of this Commitment

(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating the the subject matter of this Commitment

(d) The deletion or modification of any Schedule B, Part II - Exception does not constitute an agreement of obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy

(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company

(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy

## ALTA 2016 COMMITMENT

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### No. 7 IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

## ALTA 2016 COMMITMENT

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### No. 8 PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure

This statement is expanded from the 2006 version which state that upon request a sample copy of the policy would be provided.

# ALTA 2016 COMMITMENT

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## NO. 9 ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is less than the certain dollar amount set forth in any applicable arbitration clause, shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

This is very similar to the Arbitration clause contained in the 2006 Commitment.

## ALTA 2016 COMMITMENT

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While the rest of the information on Schedule A basically remains the same, it will now be identified in five items instead of four.

No. 1 discloses the Commitment Date

No. 2 discloses the type of Policies being committed to issue, the Proposed Insured(s) and the Proposed Policy

Nos. 3 and 4 discloses the estate or interest

No.5 discloses the legal description of the Land to be Insured

# ALTA 2016 COMMITMENT

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## Schedule B, Part I - Requirements

2006:

1. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record
2. Payment to or for the account of the grantor or mortgagors of the full consideration for the estate or interest to be Insured

# ALTA 2016 COMMITMENT

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## SCHEDULE B, PART I - REQUIREMENTS

2016

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land.
2. Pay the agreed amount of the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

# ALTA 2016 COMMITMENT

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## SCHEDULE B, PART II - EXCEPTIONS

This part of the Commitment is quite different from what we are used to with the 2006 version, starting with a statement regarding Covenants, Conditions and Restrictions.



## ALTA 2016 COMMITMENT

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This Commitment does not republish any covenant, condition, restriction or limitation contained in any document referred to in this Commitment to the extent that the specific covenant, condition, restriction or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

## ALTA 2016 COMMITMENT

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The next statement is:

The Policy will not insure against loss of damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

The first part is regarding the terms and provisions of any lease or easement that may be identified on Schedule A.

The second part is what we are used to as far as exceptions that will be shown on the policy unless cleared.

## ALTA 2016 COMMITMENT

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No. 1 is new and is considered a "gap exception."

1. Any defect, lien encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.

## ALTA 2016 COMMITMENT

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Next are the “standard” exceptions and are the same as the 2006 version:

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be asserted by an inspection of the Land or by making inquiry of persons in possession of the land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and are not shown in the Public Records.
5. Any lien or right to lien for services, labor or material imposed by law and not shown by the Public Records
6. Taxes and assessment not due and payable at Commitment Date.



COMMUNITY PROPERTY VS  
SEPARATE PROPERTY – AND  
WHY WE CARE!



# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## WHAT IS PROPERTY?

In the context of marriage, property includes:

- Real property: Houses and land
- Personal Property: Furnishings, cars, clothes
- Financial Assets: Cash, investments
- Future Interests: Pension funds, Life Insurance
- Contractual Rights

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## COMMUNITY PROPERTY

- Washington is a community property state
- Each spouse is regarded as contributing to the well being of the community and equally shares in the financial well being of the community
- *Each spouse has a one-half interest in any property acquired by the marital community*

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## WHEN DOES COMMUNITY PROPERTY MATTER?

- The marriage is dissolved
- One spouse dies
- One spouse wished to dispose of some of the community property



# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## MONEY FLOWING INTO THE COMMUNITY

- Almost any money that a spouse earns during marriage is considered community property
- This includes:
  - Salaries, wages and other compensation
  - “Windfalls”
  - Sale of community property
  - Interest and rents from community property

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## MONEY FLOWING OUT OF THE COMMUNITY

- In general, property *obtained* by the couple with community funds becomes community property

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## MONEY FLOWING INTO THE COMMUNITY FROM COMMUNITY PROPERTY

- In general, any funds flowing from community property into the community become community funds
  - Rent
  - Sale
  - Investment proceeds
  - Interest
  - Appreciation

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## SEPARATE PROPERTY

- There is a strong presumption that any property or funds obtained during a marriage are community property
- However, some property is considered the separate property of one spouse or the other

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## SEPARATE PROPERTY

- Separate Property Includes:
  - Property held by a spouse *prior* to marriage
  - Property received as a gift or inheritance by one spouse
  - Rents, interests, or profits from any separate property

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## SEPARATE PROPERTY

- New property purchased with the proceeds of separate property is considered separate property
- This concept is called *tracing*
  - If the money used to obtain property came from the community, the new property is community property
  - If the money used to obtain property came from one spouse's separate property, the new property is that spouses separate property\*

## COMMUNITY PROPERTY VS SEPARATE PROPERTY

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Wife receives inheritance from father

Wife uses inheritance to buy new car

The car is the wife's separate property

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## COMMUNITY EXPENDITURES ON SEPARATE PROPERTY

- Two common situations arise when one spouse owns separate property, such as a house, prior to marriage:
  - The community uses its labor to improve the house
  - The community pays the mortgage on the house from community funds



# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## COMMUNITY LABOR

- When the community exerts its labor on separate property, it creates a community interest for that value in the property!
  - For example, if a wife owns a house and the husband builds a new deck that causes the value of the house to increase by \$50,000, the *community* now has a \$50,000 interest in the house.

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## COMMUNITY PAYS MORTGAGE

- When the community pays mortgage on separate property owned by one spouse, that spouse owes the community for that expenditure
  - For example, if the mortgage on the wife's house is paid with her salary while the couple is married, she owes the *community* the value of all of those mortgage payments

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## THE HOUSE

- The house is the wife's separate property, however, the *community* has an interest in the house from
  - The mortgage payments made during the marriage from the community
  - The labor that the husband did on the house

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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WHAT HAPPENS WHEN ONE SPOUSE DEEDS THEIR INTEREST IN COMMUNITY PROPERTY?

Considerations:

- Does that spouse continue to reside? If so, that spouse must join in any conveyance or security instrument to eliminate any possible homestead right

Six months is generally the time frame used

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## VESTINGS THAT ARE REALLY ASKING QUESTIONS

### OR CONSIDERED "RED FLAGS"

- John Doe, presumptively subject to the community interest of his spouse, if married
- Jane Doe, who acquired title as a single person
- Susie Smith, as her separate property

(Each should cause a paragraph to appear under Schedule B, Part I - Requirements or as a numbered exception under Schedule B, Part II - Exceptions)

# COMMUNITY PROPERTY VS SEPARATE PROPERTY

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## HOW TO ANSWER MARITAL STATUS QUESTIONS

- By recitation in the document

Grantors clause in instrument could read: "John Doe, a single man on date of acquiring title and at all times since" or "John Doe, a single man until his marriage to Jane Doe on \_\_\_\_\_," and Jane joins in the execution of the document.

- Separate affidavit or statement of fact, executed by the party in question and sent to the title officer (depending on facts other parties may be required to sign forthcoming document(s))

# ACKNOWLEDGMENTS

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My sincere thanks to the following for allowing my blatant plagiarism of their excellent material - with their permission, of course!

- TODD - John B. Martin, Senior Underwriter and Counsel, First American Title Insurance Company
- 2016 vs 2016 ALTA Commitment - First American Title Insurance Company Agent/Net and the American Land Title Association

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- Community Property vs Separate Property - University of Washington Law School Street Law resources