



# What is a Deed?

May 21, 2022



**AEGIS LAND  
TITLE GROUP**



# What is a Deed?

A signed and usually sealed instrument containing some legal transfer, bargain, or contract – *Merriam-Webster.com*

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# Why do we need a Deed?



- All conveyances and encumbrances to be by deed. RCW 64.04.010
- The PSA instructs us to prepare one (or should!).



# Deed Requirements



RCW 64.04.020





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(a) In writing





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By RCW 64.04.020 every deed shall be:

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(c) Acknowledged by the party before some person authorized by this act to take acknowledgments of deeds.

A large, stylized, dark red house icon is positioned on the left side of the slide. It features a gabled roof and a chimney, rendered in a minimalist, geometric style. The house is set against a circular background that is partially visible.

Formal Deed Requirements (what the writing should contain):

**(a) Grantor** – the conveying party.





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**(b) Grantee** – the party to whom the property is conveyed



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- (c) **Words of conveyance** – expressing intent to convey



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- (e) **Acknowledgment** – a specific form of notary



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- (c) **Words of conveyance**
- (d) Adequate **description** of the property to be conveyed
- (e) **Acknowledgment** – a specific form of notary
- (f) **Words of consideration** are preferred, not required, and can be in the nominal form “ten dollars and other good and valuable consideration”.



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- (f) May have to explain name changes e.g., Jane Smith who took title as Jane Doe; or Joe E. Smith who acquired title as Joe R. Smith

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- b) Trusts – to Trustee of the XYZ Revocable Trust dated xx/yy/zzzz and not to the XYZ Revocable Trust dated xx/yy/zzzz or just to Trustee



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- c) Estate – to Personal Representative of the Estate of Ima Zombie, deceased, Some County Cause No. 12-345-6789, and **not to** Estate of Ima Zombie, deceased, Some County Cause No. 12-345-6789.



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- d) Could be a minor – should be further reviewed by title staff
- e) Could be a general partnership – should be further reviewed by title staff
- f) Could be a joint venture- should be further reviewed by title staff
- g) Generally, cannot be an unincorporated association (e.g., fraternal organizations, churches, etc.) – may be if they have a non-profit corporation structure – should be further reviewed by title staff



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- (c) Quitclaim Deed – **Conveys and quit claims (or quitclaims)**
- (d) May be other words that show an intention to pass title – title should review

## Adequate Description

- (a) Must be capable of being located on the ground with reasonable certainty based on the language in the document.
- (b) Must match the legal in your commitment.
- (c) Section, Township and Range (Sectional); **See Trustee's Deed sample**
- (d) Metes and Bounds descriptions; **See SWD sample**
- (e) Platted Property descriptions; **See Sheriff's Deed sample**



## Adequate Description (cont.)

(a) What about the following, are they part of the real property?:

(i) Buildings permanently affixed

(ii) Minerals and subterraneous substances

(iii) Water rights

(iv) Easements over adjoining land for the benefit of land conveyed

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(v) Personal property not attached to the land – **NO!**



# Acknowledgment

## (a) Acknowledgment vs. oath/affirmation

- i. This record was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_.
- ii. This record was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.
- iii. Signed and sworn to (or affirmed) before me on \_\_\_\_\_, 20\_\_\_\_  
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# Statutory Deed Forms



Warranty, Bargain and Sale, and Quitclaim



## Warranty Deed - RCW 64.04.030 – LPB 10-05 and LPB 11-05 (Fulfillment)

- i) The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, **conveys and warrants** to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . .



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What are the Warranties? Where do they come from?



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- ii) Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants on the part of the grantor:  
(1) That at the time of the making and delivery of such deed he or she was lawfully seized of an indefeasible estate in fee simple *[warranty of seisen]*, in and to the premises therein described, and had good right and full power to convey the same *[warranty to right to convey]*; (2) that the same were then free from all encumbrances *[warranty against encumbrances]*; and (3) that he or she warrants to the grantee, his or her heirs and assigns, the quiet and peaceable possession of such premises, *[warranty of quiet and peaceable enjoyment]* and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his or her heirs and personal representatives, as fully and with like effect as if written at full length in such deed *[warranty to defend]*. *Italicized language added*

**Bargain & Sale Deed** - RCW 64.04.040 – LPB 15-05 rev. 4. 2009 (similar to a Special Warranty Deed in other jurisdictions, but the Special Warranty deed spells out the warranties in the deed itself)

- i) The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, **bargains, sells, and conveys** to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . .



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**Bargains and sells – no warranties?**



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**Not so quick...**





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- ii) Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his or her heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his or her heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple *[warranty of seisen]*, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved *[warranty against encumbrances]*, and also for quiet enjoyment against the grantor, his or her heirs and assigns *[warranty of quiet enjoyment]*, unless limited by express words contained in such deed; and the grantee, his or her heirs, executors, administrators, and assigns may recover in any action for breaches as if such covenants were expressly inserted. *Underlined and italicized language added*

## Quitclaim Deed RCW 64.04.050 – LPB 12-05 rev.12.2006

- i) The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) **conveys and quitclaims** to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., (year) . . . .
- ii) Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his or her heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. *Underlined language added*

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What warranties with this deed?



Quitclaim Deed RCW 64.04.050 – LPB 12-05 rev.12.2006

NONE.

ZIP.

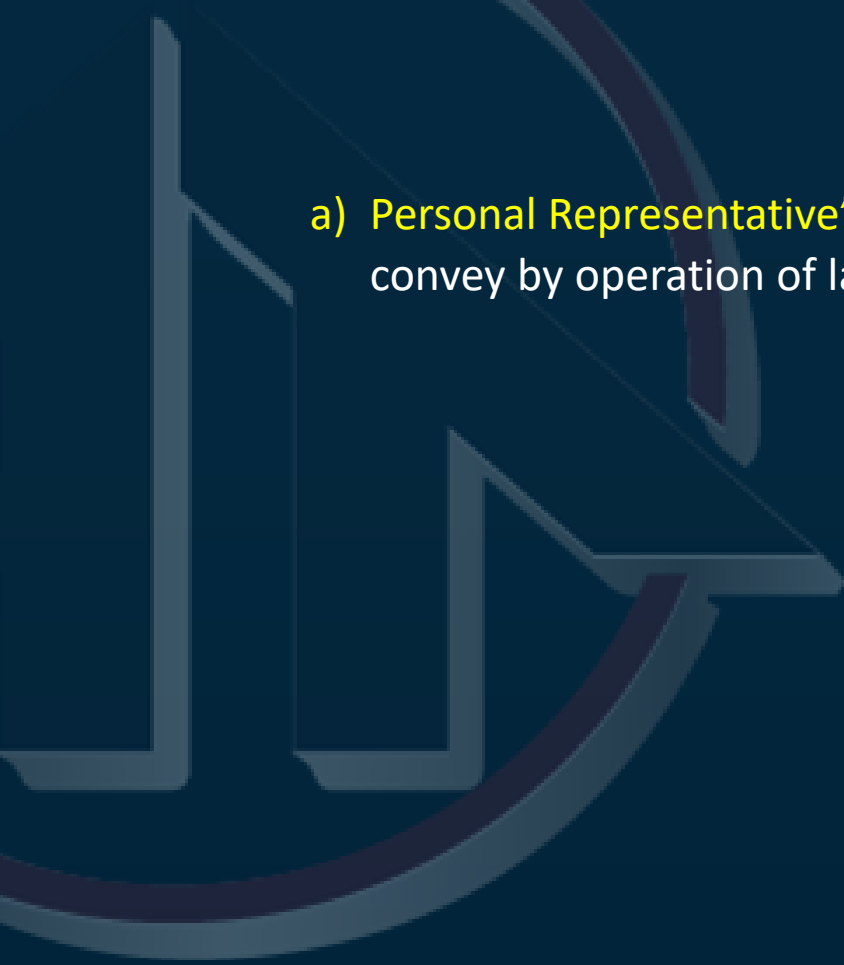
ZERO.

NADA.




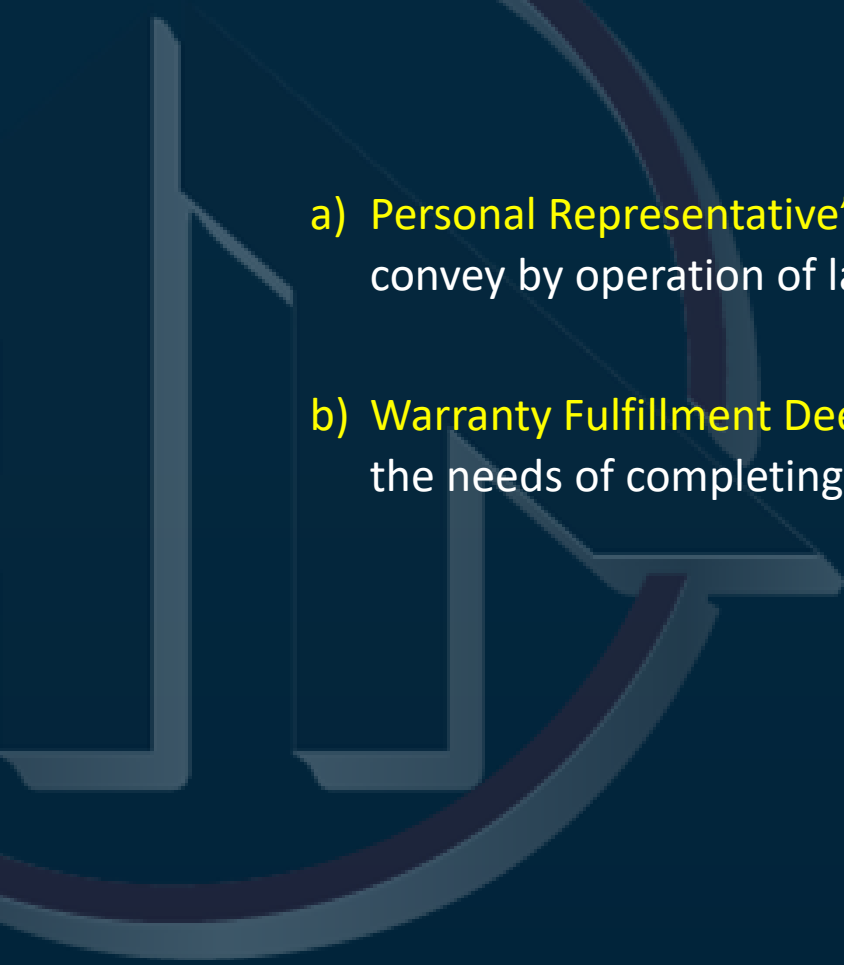

# Other Deeds an LPO *Can Prepare*







a) **Personal Representative's Deed** – LPB 74-16 rev. 1.2019 (see Bargain and Sale Deed) Grantor acquires right to convey by operation of law with no warranties from prior grantor.



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  - c) **Deed & Seller's Assignment of Contract** LPB 13-05 – Transfers in the form of a Quit Claim deed, the seller's interest in a Real Estate Contract.
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- e) **Is a Real Estate Contract a Deed?** LPB 44-05 rev.3.2009

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- e) **Is a Real Estate Contract a Deed?** LPB 44-05 rev.3.2009
- f) **What about a Deed of Trust?** e.g., LPB 20-05, 22-05, 22A-05

# Other Deeds an LPO Can NOT Prepare



**a) Transfer on Death Deed** – RCW 64.80.- NOT AN LPB form

i) Is an estate planning device, requires an attorney to draft and advise about

ii) Is revocable RCW 64.80.030

iii) Does not require notice or consideration nor delivery to the beneficiary RCW64.80.070



**a) Transfer on Death Deed** – RCW 64.80.- NOT AN LPB form (see example)

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- ii) Is revocable RCW 64.80.030
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**b) Special Warranty Deed** (no example)

- i) Must be provided to escrow, cannot be drafted by LPO per LPB (briefly was an LPO form and then dropped)
- ii) Similar to a Bargain and Sale Deed but there are some legal distinctions – (recall the warranties discussion earlier)
- iii) Why they are used is that Grantor may have acquired title by operation of law with no warranties from prior grantor, e.g., foreclosure sale, inheritance, tax sale, commercial transactions



# Other Common Deeds You May See

(see examples)



- Treasurer's Deed
- Trustee's Deed
- Deed in Lieu of Foreclosure
- Sheriff's Deed



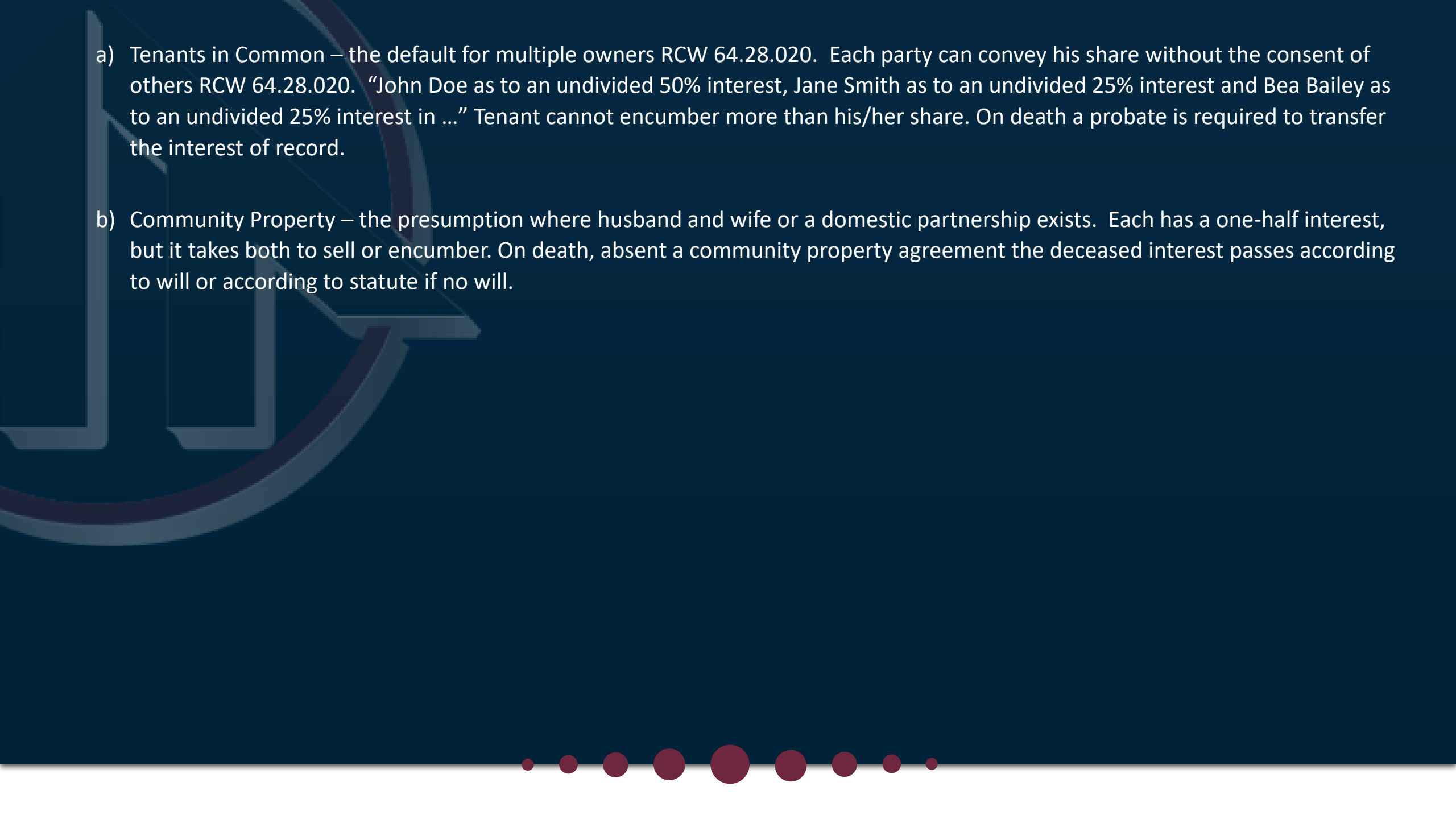
# Identifying a Party's Status and Interest





a) Tenants in Common – the default for multiple owners RCW 64.28.020. Each party can convey his share without the consent of others RCW 64.28.020. “John Doe as to an undivided 50% interest, Jane Smith as to an undivided 25% interest and Bea Bailey as to an undivided 25% interest in ...” Tenant cannot encumber more than his/her share. On death a probate is required to transfer the interest of record.



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- c) Joint Tenants with Right of Survivorship “JTWROS”– Authorized by statute RCW 64.28.010. An LPO cannot prepare a deed in this form unless instructed to do so and ideally the form is provided by the parties or their legal counsel.
  - i) “Will Low and Bea Low as joint tenants with right of survivorship and not as tenants in common or community property.”
  - ii) The old school practice, which Aegis continues to endorse as best practice, is to add a clause to the deed for Grantees to sign, to wit:
    - (1)The Grantees, by signing the acceptance below, evidence their intention to acquire said premises as joint tenants with right of survivorship and not as tenants in common.
- iii) Chief benefit of the JTWROS is that, on death, the deceased tenant’s interest passes to the remaining tenant without probate.

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Gary Grantee

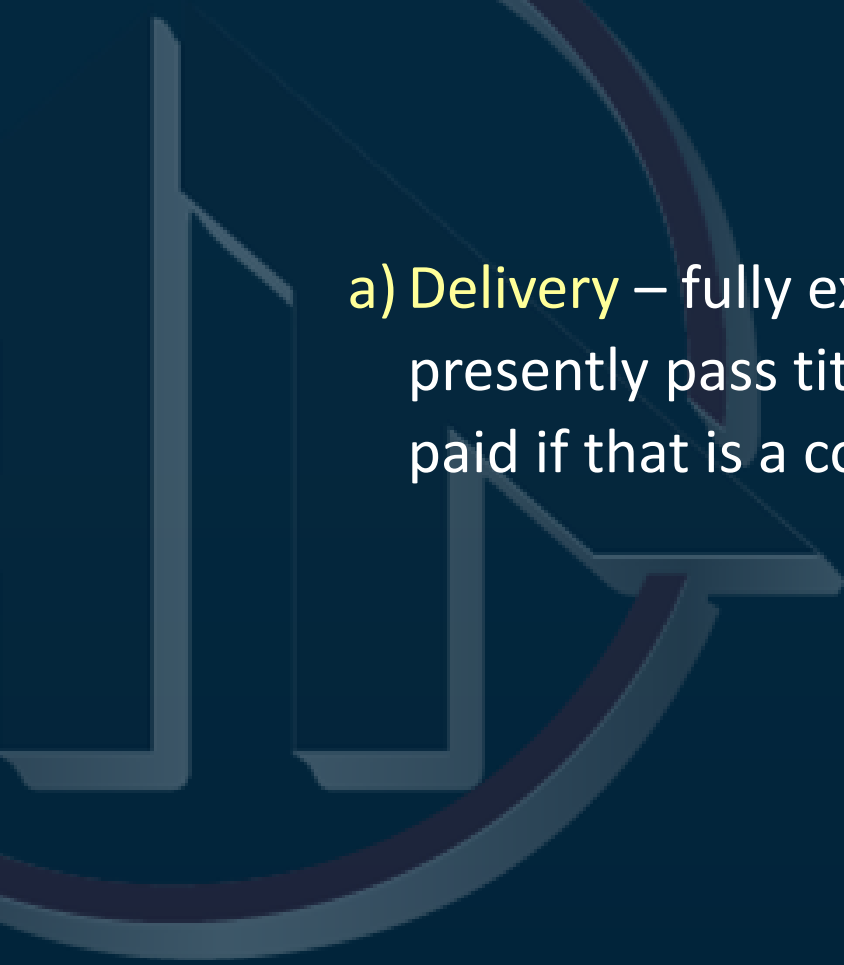
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Georgia Grantee



# When is a Deed Effective?





a) **Delivery** – fully executed delivery to grantee with intent that deed should presently pass title. Delivery is not complete if waiting on purchase price to be paid if that is a condition of delivery; **and**



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b) **Acceptance** – acceptance is rebuttably presumed if there is a benefit to the grantee.



# Recording – Why?



Recording gives constructive notice to the world of the transfer. There are three main theories behind state recording laws:

- a) Race – First to record has priority over other recordings and “wins” regardless of date of conveying document.





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- a) Race – First to record has priority over other recordings and “wins” regardless of date of conveying document.
- b) Notice – A later buyer who pays fair value for property and has no notice of any other transfer of interest “wins”.
- c) Race Notice - A later buyer who pays fair value for property and has no notice of any other transfer and records first, “wins” and has priority over later recordings. This is Washington’s law.

## Recording Requirements RCW 65.04.045

- i) Paper size – smallest = 8.5 x 11 inches; largest = 8.5” x 14”
- ii) Font size 8 point or larger
- iii) First page – 3” top margin and 1” margin all sides clear (except return to address). Also, must contain:
  - (1) Return address in the 3” top margin
  - (2) Document title below the 3” top margin
  - (3) Name(s) of grantor(s)
  - (4) Name(s) of grantee(s)
  - (5) If applicable, Reference Auditor’s file numbers for documents assigned or released or previously recorded documents
  - (6) Abbreviated legal description of property and reference to page number where full legal description is found
  - (7) Assessor tax parcel number(s) of real property
- iv) Other pages – 1” margin all sides
- v) Documents that do not meet margin and font size requirements may record as “nonstandard” using a cover sheet and an additional \$51 in recording fees. See RCW 6.04.047
- vi) Legibility – All document text, seals, drawings, signatures, etc. must be legible and capable of producing a readable image.
- vii) No Social Security Numbers, Birthdates, or maiden names of parents allowed on recorded documents without redaction.

# Re-Recording – Oops!



- i) Scrivener's error – E. vs. W., etc.
- ii) Resign and Re-Acknowledge required if **substantial** changes, including but not limited to:
  - (1) Different names, add names, remove names
  - (2) Adding or removing property
- iii) Need Original or Certified copy of Original recorded document
  - (1) Make the changes on the original or certified copy or attach as needed
  - (2) Need a REETA if a Deed is being re-recorded – remember the fee
  - (3) Excise Exemption for re-recording see WAC 458-61A-217:

**“WAC 458-61A-217 Rerecord. (1) Introduction.** The rerecording of documents to correct a legal description, change contract terms, or correct the spelling of the name of a party to the transaction, is not subject to the real estate excise tax.

**(2) Documentation required.** An affidavit is required for the re-recording. The affidavit must refer to the prior affidavit number and the recorded document number for the prior transaction, and must include a complete explanation of why the rerecording is necessary.”



Thank you



Questions?

