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JOINT TENANCY IN REAL PROPERTY—THE TITLE INSURER'S VIEWPOINT

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Initiative Measure No. 208[1] is necessarily brief and does little more than authorize in Washington "a form of co-ownership of property, real and personal, known as joint tenancy." In view of the prior history of joint tenancy with right of survivorship in Washington, so far as real property is concerned, practically the entire existing local law on the subject is provided by the initiative measure. This engrafts a new system of real property ownership onto the existing body of Washington real property law which has been in the process of development for over a century. This article must therefore deal primarily with opinion, or evaluation of alternatives, rather than with authoritative conclusions. Moreover, even the most general treatment of a subject as broad as "joint tenancy in real property" is far beyond the permissible scope of this article and it must follow that the discussion will be limited to a few specific problems which would appear to be of general and basic interest.

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[1] Wash. Sess. Laws 1961, ch. 2. "AN ACT Relating to property; authorizing joint tenancies in real and personal property with common law incidents of survivorship and severability; allowing property rights of a deceased joint tenant to pass immediately upon death to the surviving joint tenant; prescribing methods and requirements for the creation of joint tenancies; providing that the transfer of property to surviving joint tenants shall not derogate from the rights of creditors; and repealing existing laws which abolished the right of survivorship as an incident of joint tenancies or tenancy by the entireties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

"Section 1. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. Joint tenancy may be created by written agreement, written transfer, deed, will or other instrument of conveyance, when expressly declared therein to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants: PROVIDED HOWEVER, That such transfer shall not derogate from the rights of creditors.

"Section 2. Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in section 1, or unless acquired as community property or unless acquired by executors or trustees.

"Section 3. The provisions of this act shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW 26.16.120.

"Section 4. Section 1, page 165, Laws of 1885, section 1, chapter 270, Laws of 1953, and RCW 11.04.070 are each repealed."

In this discussion it is assumed that in Washington, under the initiative measure, a common law joint tenancy is authorized except to the extent that specific provisions of the initiative measure are inconsistent therewith (as, possibly, the proviso to section 1 that "such transfer shall not derogate from the rights of creditors"). It is not of course entirely clear that this assumption is correct. With respect to creation of a joint tenancy, for example, the initiative measure provides that joint tenancy "may be created by written agreement, written transfer, deed, will or other instrument of conveyance;" and further, that every interest created in favor of two or more persons in their own right "is an interest in common, ... unless declared in its creation to be a joint tenancy...." It may thus be argued that in Washington the creation of a joint tenancy is merely a matter of clearly expressed intention and not of compliance with formalistic, common law requirements.

CREATION OF A JOINT TENANCY

The "four unities" rule. The "four unities" rule has been expressed as follows:

> In order to constitute a joint tenancy, four requisites must exist, namely: The tenants must have one and the same interest; the interests must accrue by one and the same conveyance; they must commence at one and the same time; and the property must be held by one and the same undivided possession. In other words, there must be four unities: (1) unity of interest, (2) unity of title, (3) unity of time, and (4) unity of possession. If any one of these elements is lacking, the estate will not be one in joint tenancy. Hence, where two or more persons acquire an individual interest in property at different times or by different conveyances, the estate created is not joint tenancy, for the unity of time or the unity of conveyance would be disregarded were this to be called a joint tenancy.[2]

As indicated, the initiative measure does not in terms prescribe the "four unities" rule for Washington. Provision is made, however, that a joint tenancy "shall have the incidents of survivorship and severability as at common law." Since at common law it is the destruction of one or more of the four unities that severs and destroys the joint tenancy,[3] there is an implication that the four unities must be present in the creation of a joint tenancy under the Washington law.

Most states still require the four unities to exist if a joint tenancy is to be created, and virtually all require that the unities continue to

[2] 14 AM. JUR. *Cotenancy* § 7 (1938).
[3] Van Antwerp v. Horan, 390 Ill. 449, 61 N.E.2d 358 (1945).

exist if the joint tenancy is to continue.[4] In some jurisdictions, however, the rule has been modified to eliminate the necessity of the "straw man" conveyance. This has been accomplished by statute in California.[5] In certain other states the same result has been reached by judicial decision.

In *Therrien v. Therrien*,[6] the Supreme Court of New Hampshire determined the validity and effect of a warranty deed executed by Marie Louise Therrien to her husband. The granting clause of the deed included the words "To be held by him with this grantor in joint tenancy with full rights of ownership vesting in the survivor;" the habendum clause included the words "to him the said grantee as joint tenant. . . ." The argument advanced in behalf of the heirs of the grantor was that the deed failed to create a joint tenancy since the four unities were lacking. Holding that whenever possible the intention of the grantor will override "purely formalistic objections to real estate conveyancing based on shadowy, subtle and arbitrary distinctions and niceties of the feudal common law," the court observed:

> Adequate support for this constructional rule from respected sources is not lacking. . . . "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Holmes, Collected Legal Papers (1920) 187. . . .
>
> There remains the more difficult question of the validity of this deed to create a joint tenancy in the plaintiff and his wife. At common law such a deed lacks the four-fold unities of interest, title, time and possession and is ineffective to create a joint tenancy. This rule persists today in several jurisdictions, although no attempt is made to justify either its present or past existence. As a result of this doctrine, there has been a practice of accomplishing the same result by the owner of the property conveying to a third party (frequently the stenographer or scrivener writing the deed) who immediately reconveys to the husband and wife as joint tenants. This circuitous device, incomprehensible to laymen and in

[4] 4 THOMPSON, REAL PROPERTY § 1777 (repl. 1961).

[5] CAL. CIV. CODE, § 683. "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself and others, or from tenants in common to themselves, or to themselves and others, or from a husband and wife when holding title as community property or otherwise to themselves or to themselves and others when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument or agreement. Provisions of this section shall not restrict the creation of a joint tenancy in a bank deposit as provided for in the Bank Act."

[6] 94 N.H. 66, 46 A.2d 538 (1946).

the twentieth century difficult of justification by the legal profession, has been frequently criticized and rarely praised. The necessity of requiring an extra deed makes a fetish out of form and compels the parties to the instrument to employ an indirect manoeuvre of the eighteenth century merely to satisfy the outmoded unities rule. By judicial decision or statute a contrary result has been obtained in some jurisdictions.

The prevailing trend of the recent decisions allows the owner of property to convey to himself or herself and the other spouse by one deed to create a joint tenancy or a tenancy by the entirety.

Neither public policy, statutes or reason prevent the parties from doing directly that which they may accomplish through a straw man indirectly. The legal effect should be no different in the case where the grantor becomes a joint grantee than in the instant case where there is a retention of a part of the title in the grantor. If a conveyance to two completely divests the grantor's title, a similar grant to one retaining a like interest in the grantor must, in like manner, divest the grantor of the part granted. No valid reason appears for denying the right of an owner of the complete title to create a joint interest with rights of survivorship by a conveyance of a portion of the title.[7]

The court concluded that the deed in question created a valid joint tenancy with right of survivorship in the grantor and grantee. In Iowa the more liberal rule has also been adopted.[8]

Illustrative of the opposing line of cases is *Deslauriers v. Senesac*,[9] which involved a conveyance of the wife's property executed by herself and her husband to themselves, with the recital: "Said grantors intend and declare that their title shall and does hereby pass to grantees not in tenancy in common but in joint tenancy." Discussing the effect of the conveyance, the Court stated:

Ida Deslauriers was the sole owner . . . prior to the execution of the deed from herself and husband to themselves. She could not by that deed convey an interest in the property to herself. . . . Hence the interests of Ida Deslauriers and her husband were neither acquired by one and the same conveyance, nor did they vest at one and the same time. Two of the essential properties of a joint estate—the unity of title and the unity of time—were therefore lacking. Where two or more persons acquire individual interests in a parcel of property by different conveyances and at different times, there is neither unity of title nor unity of time, and in such a situation a tenancy in common, and not a joint tenancy is created. . . .

Appellee denies that a tenancy in common was created, because, he argues, the deed expressly stated that the conveyance was made to the grantees as joint tenants and not as tenants in common. It was clearly

[7] *Id.* at 66, 46 A.2d at 538-39 (1946).

[8] Switzer v. Pratt, 237 Iowa 788, 23 N.W.2d 837 (1946); Conlee v. Conlee, 222 Iowa 561, 269 N.W. 259 (1936).

[9] 331 Ill. 437, 163 N.E. 327 (1928).

> the intention of the grantors to convey an estate in joint tenancy. The intention of the parties to a deed will be given effect, if it can be done consistently with the rules of law. . . . It was not for failure to ascertain the intention of the grantors that the grantees did not take title in a joint tenancy, but because, under the law, a joint tenancy could not be created in the manner which was here attempted. The operation of a deed on the legal title is not controlled by the intention of the parties, but is governed by law.[10]

The court held that the deed conveyed an undivided one-half interest in the property to the husband and that the wife retained the remaining interest, which upon her death intestate descended to her heirs.

The *Therrien* and *Deslauriers* decisions have been treated in some detail because the question of applicability of the "four unities" rule, in all its feudal splendor, to creation of joint tenancies in Washington is of primary importance. While inquiry discloses that relatively few deeds creating (or purporting to create) joint tenancies have been recorded since Initiative Measure 208 became effective, it is perhaps safe to generalize that as many joint tenancy holdings have been and will be created by conversion from a different form of existing ownership as will be created in the initial acquisition of ownership. Many such attempts at conversion will probably be defeated if the unities rule is strictly applied. The rule of the *Therrien* case is preferable to the rule of the *Deslauriers* case from the viewpoint of both private interest and public interest. Certainly there is little to be said for adoption of a rule of conveyancing which defeats the clearly expressed intention of the parties unless that intention is in conflict with express legislative enactment or is contrary to public policy. It is submitted that neither public policy nor the provisions of the initiative measure preclude adoption of the more liberal rule. No legitimate private interest is served by requiring the preparation and execution of all but meaningless "straw man" conveyances and no public interest is served by burdening the recording system with such conveyances.

Nevertheless, until the question has been settled in Washington by statute or decision, it must be assumed that in appropriate situations a "straw man" conveyance is necessary to establish the holding of title under the four unities. Therefore, title insurers in Washington will for the present be unwilling to insure that a joint tenancy with right of survivorship has been created unless there has been a full technical compliance with the four unities rule.

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[10] *Id.* at 439, 163 N.E. at 329 (1928).

Sufficiency of particular language. The initiative measure provides that joint tenancy may be created by "written agreement, written transfer, deed, will or other instrument of conveyance, when expressly declared therein to be a joint tenancy. . . ." Section 2 employs the phrase "declared in its creation to be a joint tenancy." Thus it is necessary to consider the sufficiency of particular language as meeting the requirement of "declaring" the joint tenancy.

Undoubtedly the ideal language to use in a statutory form deed intended to create a joint tenancy is that which refers specifically to joint tenancy with right of survivorship and expressly negatives the creation of a tenancy in common or, in the case of husband and wife, a community property estate. In the case of grantees who are not husband and wife, the deed will undoubtedly be sufficient to create a joint tenancy if the conveyance runs to the grantees "as joint tenants with right of survivorship and not as tenants in common." If the grantees are husband and wife, the words "and not as a community property estate" should follow the language quoted in the preceding sentence. Probably much less in the way of descriptive language will be held sufficient, *e.g.*, "as joint tenants and not as tenants in common;" or "as joint tenants with right of survivorship;" or "as joint tenants;" or "in joint tenancy." However, the descriptive language "declaring" a joint tenancy which is recommended here is employed as a matter of course in certain jurisdictions.[11]

The title insurance companies in Washington have tentatively concluded that they will not insure that the following descriptive phrases are sufficient to declare a joint tenancy:

> "to *A* and *B*, jointly;"
> "to *A* and *B*, with right of survivorship;"
> "to *A*, an undivided one-half interest, and
> to *B*, an undivided one-half interest, as
> joint tenants;"[12]
> "to *A* and *B*, not as tenants in common."

There would appear to be no justification whatever for an attempt to create a joint tenancy with right of survivorship by conveyance to "*A*

[11] A printed form "joint tenancy deed" widely used in Arizona is, in part, as follows: ". . . I or we, ...do hereby convey to....., not as tenants in common and not as a community property estate, but as joint tenants with right of survivorship, the following described property. . . ."

[12] Because this phraseology is not consistent with the traditional concept that joint tenants hold "by the half and by the whole," *i.e.*, each owns the entire estate for the purpose of survivorship but only a particular interest, equal to that of his co-tenant(s), for the purpose of alienation.

and/or *B*" or to "*A* or *B*," either with or without additional explanatory language.

While a clear and complete expression of intent to create a joint tenancy is to be recommended, extra verbiage will not necessarily serve that purpose. For example, a deed running to four persons "as joint tenants, and to their heirs and assigns, and to the survivors or survivor of them, and to the heirs and assigns of the survivors or survivor of them, forever," was construed to create in the grantees a joint tenancy for life with a contingent remainder in fee simple to the survivor.[13] The ultimate result with respect to the survivorship aspect may be the same as if such conveyance were construed as creating a joint tenancy in fee, but other aspects (particularly in connection with alienation and creditors' rights) will be entirely different.

The language declaring the joint tenancy should appear in the granting clause of a deed rather than as a recital elsewhere in the deed.[14] Many reported decisions involve the question of inconsistency between the granting and habendum clauses regarding the estate conveyed. In general it appears that apt language to create a joint tenancy, appearing in the granting clause or even as a recital, will control over the habendum clause which makes no reference to joint tenancy or the right of survivorship. Obviously, however, when a common law deed form is used all parts of the deed should be consistent in referring to joint tenancy with right of survivorship if the grantees are to take an estate in joint tenancy.

Interests which may be held in joint tenancy.

> An estate in joint tenancy may be created in fee, for life, for years, or even in remainder. Such estate may be created in an equitable title to property. A joint tenancy may be created by lease. Whatever is subject to individual dominion by virtue of the law of sole ownership is susceptible of being made the subject of such joint dominion as results from the law of joint ownership subject to statutory limitations.[15]

Since Initiative Measure 208 declares that "there shall be a form of co-ownership of property, real and personal, known as joint tenancy" there is no statutory limitation upon the type of property interests which may be held in joint tenancy.

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[13] Jones v. Snyder, 218 Mich. 446, 188 N.W. 505 (1922).

[14] "Relatively to the granting clause, recitals in a deed stand in much the same position as the habendum—that is, the granting clause, if clear and specific, will prevail over recitals, whether such recitals precede or succeed the granting clause. On the other hand, such recitals may be resorted to for the purpose of clearing up any obscurity as to the estate or interest conveyed." 16 AM JUR. *Deeds* § 241 (1938).

[15] 4 THOMPSON, REAL PROPERTY § 1776, at 14-15 (repl. 1961).

While unity (or equality) of interest is undoubtedly essential to a joint tenancy, the interests of the joint tenants need be equal only in the estate held in joint tenancy, not necessarily in the entire ownership of the land. Thus, if *A* conveys Blackacre to *H*, an undivided one-half interest, and to *H* and *W*, as joint tenants, an undivided one-half interest, the joint tenancy is valid because the interests of *H* and *W* are equal in the half interest held in joint tenancy.[16] *Winchester v. Wells*[17] involves a most interesting question in this general area of discussion.[18]

COMMUNITY PROPERTY PROBLEMS

One of the most interesting facets of the development of the law of joint tenancy in Washington will undoubtedly be the reconciliation of certain principles of joint tenancy ownership with the community property system. Referring to this problem, the California court commented in *Siberell v. Siberell:*[19]

> From these statutory provisions it is clear that in California we have a modified form of certain estates known to the common law and have them operating alongside of the community property system, an importation from Spanish law. Naturally, therefore, at times there will appear to be difficulty in harmonizing these systems. But our statutes have been amended from time to time, so altering the original provisions of each of the systems as to allow them both a place in our jurisprudence.

De Funiak observes that, "in sober truth, this grafting by statute of tenancies of common law origin upon the community property system is entirely inconsistent with the community property system."[20]

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[16] *In re* Estate of Galleto, 75 Cal. App. 2d 580, 171 P.2d 152 (1946); OGDEN, CALIFORNIA REAL PROPERTY LAW § 3.5.

[17] 265 F.2d 405 (5th Cir. 1959).

[18] The case is summarized in 1960 A.B.A. REP., REAL PROPERTY PROBATE AND TRUST LAW, PART II REAL PROPERTY LAW DIVISION, at 85, as follows: "A deed of Florida land to A, B, C, and D purported to 'give to A and B, his wife, as an estate by entireties, an undivided one-half interest; to C an undivided one-fourth interest; and to D an undivided one-fourth interest,' providing further for the right of survivorship between the spouses as to their interest, and among all the grantees as to the whole lot. A and D died. D's administrator sought partition, alleging that B owned a half interest, C a one-fourth interest and the estate of D another one-fourth. The court affirmed a district court denial of partition, relying on an intermediate Florida court decision construing the 1941 amendment to a Florida antisurvivorship statute as permitting tenants in common to take by survivorship under a deed expressly so providing. The opinion implied that it might have reached the same result, if the Florida state court decision had not been available, by finding a joint tenancy notwithstanding that the deed gave to the entireties an interest larger than that of either of the two cotenants. The court said, 'It does not seem essential in all cases that there be an equality of interest among all grantees in order that a joint tenancy be created.'"

[19] 214 Cal. 767, 7 P.2d 1003, 1004 (1932).

[20] 1 DE FUNIAK, COMMUNITY PROPERTY § 134, at 385 (1943).

The community or separate character of a joint tenancy interest. In community property states which also permit joint tenancies, the courts have generally held that property owned by husband and wife may be held either in joint tenancy or as community property but not both. In the *Siberell* case, the court stated:

> First, from the very nature of the estate, as between husband and wife, a community estate and a joint tenancy cannot exist at the same time in the same property. The use of community funds to purchase the property and the taking of title thereto in the name of the spouses as joint tenants is tantamount to a binding agreement between them that the same shall not thereafter be held as community property but instead as a joint tenancy with all the characteristics of such an estate. It would be manifestly inequitable and a subversion of the rights of both husband and wife to have them in good faith enter into a valid engagement of this character, and, following the demise of either, to have a contention made that his or her share in the property was held for the community, thus bringing into operation the law of descent, administration, rights of creditors, and other complications which would defeat the right of survivorship, the chief incident of the law of joint tenancy.[21]

In *Collier v. Collier*,[22] involving disposition in a divorce proceeding of property held in joint tenancy by husband and wife, the Supreme Court of Arizona held that the interest of a joint tenant in joint tenancy property is a separate estate.[23]

Although the *Siberell* rule was qualified to some extent by two later decisions,[24] the doctrine of that case nevertheless eliminates any possibility of overlapping of joint tenancy interests and community property interests in the same property at the same time in California.

Stone v. Marshall[25] and Section 2 of the initiative measure seem to uphold the same rule and Washington title insurers have therefore concluded that for all purposes the interest of each joint tenant in a

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[21] Siberell v. Siberell, 214 Cal. 767, 768, 7 P.2d 1003, 1005 (1932).

[22] 73 Ariz. 450, 242 P.2d 537 (1952).

[23] In 1937, the Supreme Court of Arizona had held in *In re* Baldwin's Estate, 50 Ariz. 265, 71 P.2d 791 (1937), that joint tenancy between husband and wife was permissible but that such an estate being in derogation of the community property system, the intention to create the joint tenancy must be clearly expressed. In 1942, in Henderson v. Henderson, 58 Ariz. 514, 121 P.2d 437 (1942), the same court expressed doubt that the holding in *Baldwin* that husband and wife could own as joint tenants was correct but followed the holding of the earlier case on the basis of stare decisis.

[24] Tomaier v. Tomaier, 23 Cal. 2d 754, 146 P.2d 905 (1944); and Delanoy v. Delanoy, 216 Cal. 23, 13 P.2d 513 (1932), holding in substance that evidence is admissible to establish that husband and wife who took title as joint tenants actually intended it to be community property or thereafter converted such property to community property by an oral or written agreement.

[25] 52 Wash. 375, 100 Pac. 858 (1909).

properly created joint tenancy holding must be treated as a separate estate.

Joint tenancy between husband and wife and joint tenancy between a married person and others. Perhaps the most basic of all community property concepts under the law of Washington is the statutory presumption that all property acquired after marriage is community property, whether title is taken in the name of husband or wife, unless acquired by gift, devise or descent. The presumption can be overcome only by clear proof that the consideration given for the conveyance was money (or other property) which was the separate property of the spouse in whose name title is taken. Applying this community property concept to acquisition of real estate in joint tenancy, a potential problem exists where community funds are used to purchase real estate, title to which is taken in joint tenancy by husband and wife (or either husband or wife and one or more persons other than the spouse). The husband, having management and control of community personal property (RCW 26.16.030), may clearly use community funds to purchase real estate but may he direct that title to the realty be conveyed in such manner as to defeat the wife's community interest entirely (as when the husband and someone other than his wife acquire title as joint tenants) or to impair the wife's community interest (as when the title is conveyed to husband and wife, as joint tenants) by depriving her of her power to dispose of such interest by will and by depriving her of the protection from claims of certain classes of creditors which is an incident of ownership of real estate as community property?[26] In this regard, several rules of prac-

[26] "As between husband and wife a joint tenancy is an exception to the community property rule of this state and in derogation of the general policy of that system of holding property, and this being true a clause in a deed creating a joint tenancy between them should be effective only where it clearly appears that both spouses have agreed that the property should be taken in that way.... If the deed itself contains nothing showing this fact, such, for instance, as an acceptance of the terms thereof in the handwriting of the grantees, or an indorsement by the recorder that it was placed of record at the request of the deceased spouse, it might be established by any proper extrinsic evidence.

"It must be kept in mind in this connection that community property is frequently managed by one of the spouses and that it may easily happen that property is purchased by that spouse with community funds and a deed thereto containing language creating an estate in joint tenancy delivered to and accepted by him or her without any knowledge of such provision on the part of the other spouse. . . . [W]e think that the party who relies on a joint tenancy clause in a deed should bear the burden of showing that the spouse whose property he claims is governed thereby knew that the deed so provided." *In re* Baldwin's Estate, 50 Ariz. 265, 71 P.2d 791, 795 (1937).

See also *In Re* Allen's Estate, 54 Wn.2d 616, 343 P.2d 867 (1959), involving husband's purchase of United States Saving Bonds (beneficiary) with community funds. Noted in 35 WASH. L. REV. 280 (1960).

tice (following the pattern established in other community property jurisdictions) are suggested by the title insurers. These may be explained and illustrated as follows:

(1) *A conveyance by a third person to husband and wife, as joint tenants.* Husband and wife will hold title in a valid joint tenancy, binding on both, provided both consented to acquisition of title in this manner. Such consent may in fact have been given by the joinder of both in execution of earnest money agreement, escrow instructions or other underlying documents which call for conveyance to them as joint tenants. However, consent in that form will not be established by the public records and establishment of such consent by testimony or by production of the underlying document may be difficult or impossible when the question is raised, perhaps after the lapse of many years. Accordingly, the purported joint tenancy will not be deemed valid unless endorsement on the deed by the grantees expressly establishes the required consent. The endorsement may be in substantially the following form:

> The grantees by signing the acceptance below, evidence their intention to acquire said premises as joint tenants with the right of survivorship, and not as community property or as tenants in common.
> Accepted and approved:
> _____
> _____

(2) *A conveyance by a third person to husband and wife and one or more of their children, as joint tenants.* If any such child is married and the spouse is not a grantee, the spouse should be named as a grantor and the deed should contain a recital as follows:

> Jane Doe, wife of John Doe, grantee herein, joins as grantor in this deed for the purpose of acknowledging that the consideration paid by her husband for the land herein described is his separate property and of evidencing her consent to the creation of a joint tenancy in the grantees above named.

The spouse so named as grantor should execute and acknowledge the deed in the same manner as the other grantors. In addition, consent of the mother and father should be endorsed on the deed as indicated (and for the reason stated) in (1).

(3) *A conveyance by a third person to a married man (or married woman) and one or more persons other than the wife (or husband), as joint tenants.* The non-grantee spouse should join in the deed as grantor and the deed should contain the recital set out in (2).

(4) *A conveyance by a third person to a husband and wife and one or more other persons, as joint tenants.* The husband and wife should endorse their consent to acquisition of title in this manner, as follows:

> John Doe and Mary Doe hereby accept the interest herein conveyed to them as joint tenants with (other named grantees),
>
> and each should sign the endorsement. If the interest of the "one or more other persons" mentioned in this example also involves a community property question, it should be eliminated by an appropriate endorsement, or by joinder, as explained above.

Joinder as grantor by a non-grantee spouse of a joint tenant is recommended because it is believed that a separate deed which purports to convey the community interest of the non-grantee spouse of a joint tenant would be unacceptable since it would destroy the required unities of time and title.

It is doubtful that the required joinder or consent can be executed on behalf of a principal by an attorney-in-fact when the principal and attorney-in-fact are spouses, unless the power of attorney specifically confers authority to do so.

These recommended rules of title practice obviously presuppose a conveyance which recites the payment of a monetary consideration. If the acquisition in any of the situations discussed is by means of a gift deed, no problem of conversion of community assets into a different type of ownership is presented and acceptance or consent by a grantee or non-grantee spouse is unnecessary.

If a deed, in all other respects sufficient to create a joint tenancy, is recorded without the suggested joinder or appropriate endorsed consent, the defect can be cured by a "straw man" conveyance which does meet the requirements of joinder or endorsed consent, thus eliminating any problem of outstanding community interest. While such "straw man" conveyance would be the preferred method of eliminating the question of outstanding community interest, a later separate recorded acknowledgment of joint tenancy acquisition would probably suffice.[27]

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[27] A form of consent to be executed and acknowledged by grantee spouses, recommended by the title insurance companies, is as follows:

ACKNOWLEDGMENT OF JOINT TENANCY ACQUISITION

The undersigned, grantees in that certain deed dated....., and recorded .....under Auditor's File No....., conveying title, in joint tenancy, to the following described property in.....County, Washington:

(insert description)

acknowledge that said conveyance in joint tenancy was made with the consent and approval of the undersigned; and that it was at the direction of the undersigned declared in said instrument to be a joint tenancy with the right of survivorship, and that title was not acquired by them as an interest in common and was not acquired as community property.

Dated this.....day of.....

A form of acknowledgment or admission of separate character of joint tenancy acqui-

As indicated, a later conveyance to the purported joint tenants by the spouse of one would not suffice inasmuch as the "four unities" would be disturbed.

It must be noted that there can be no certainty that joinder or consent as discussed above will be required to create a valid joint tenancy, particularly if the Supreme Court of Washington is disposed to adopt a strong policy of protection of bona fide purchasers relying on the record title and to hold that such purchasers need not inquire regarding the separate or community character of the funds used to acquire title as in these examples.[28] Accordingly, while title insurers will not insure the validity of the joint tenancy when community property questions are not resolved because joinder or consent of record is lacking, neither will they ignore the purported joint tenancy. Upon death of a purported joint tenant in this situation, title will be insured only upon the recording of conveyances which have the effect of merging the claims or interests of the surviving joint tenant(s) and the persons who would succeed to the decedent's interest if his ownership thereof were adjudged to be a community property holding rather than an interest held in joint tenancy.

SEVERANCE

In Washington, a joint tenancy "shall have the incidents of survivorship and severability as at common law."[29] But what "common law" is incorporated by this provision? "No one will contend that the common law, as it existed in England, has ever been in force in all its provisions in any State in this Union. It was adopted so far only as its principles were suited to the conditions of the colonies; and from this circumstance we see what is common law in one State is not so con-

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sition to be executed and acknowledged by a non-grantee spouse, recommended by the title insurance companies, is as follows:

ACKNOWLEDGMENT OF SEPARATE CHARACTER
OF JOINT TENANCY ACQUISITION

The undersigned, spouse of....., one of the grantees in that certain deed dated....., and recorded.....under Auditor's File No....., conveying title, in joint tenancy, to the following described property in..... County, Washington:

(insert description)

acknowledges and declares that the portion of the purchase price paid by said grantee was paid with said grantee's separate funds; and the undersigned further acknowledges and declares that at the date of creation of the joint tenancy interest in the above described property the undersigned consented to its creation as a valid joint tenancy in all the grantees named in the deed above described.

Dated this.....day of .....

[28] In this connection, see RCW 26.16.095, 100.

[29] Wash. Sess. Laws 1961, ch. 2, § 1.

sidered in another."[30] Rules regarding severance of estates held in joint tenancy have, by judicial decisions, developed differently in different jurisdictions and in many situations which involve a severance problem, authority on both sides of the question can be produced.

Definition and general statement. Severance of a joint tenancy has been succinctly defined as follows: "The destruction of any one of the unities of a joint tenancy. It is so called because the estate is no longer a joint tenancy but is severed."[31] The decision in *Re Baker's Estate*[32] quotes Blackstone on the subject of severance of joint tenancy in part as follows:

> "We are, lastly, to enquire, how an estate in joint-tenancy may be severed and destroyed. And this may be done by destroying any of its constituent unities. 1. That of time, which respects only the original commencement of the joint estate, cannot indeed (being now past) be affected by any subsequent transactions. But, 2. The joint-tenants' estate may be destroyed, without any alienation, by merely disuniting their possession. For joint-tenants being seised *'per my et per tout,'* everything that tends to narrow that interest, so that they shall not be seised throughout the whole, and throughout every part, is a severance or destruction of the jointure. And therefore, if two joint-tenants agree to part their lands, and hold them in severalty, they are no longer joint-tenants; for they have now no joint-interest in the whole, but only a several interest respectively in the several parts. And for that reason also, the right of survivorship is by such separation destroyed. * * * 3. The jointure may be destroyed, by destroying the unity of title. As if one joint-tenant alienes and conveys his estate to a third person: here the joint-tenancy is severed, and turned into tenancy in common; * * * 4. It may be destroyed, by destroying the unity of interest. * * * And, whenever or by whatever means the jointure ceases or is severed, the right of survivorship or *jus accrescendi* the same instant ceases with it. * * *"[33]

There appears to be virtually no dispute among courts regarding the essential nature or proper definition of severance of a joint tenancy. The conflict arises when the accepted general principles are applied to specific acts or occurrences. While one court may hold that a particular act does in fact destroy one or more of the four unities, another may hold that the same act does not have that effect. Any discussion at this time of severance under the Washington law will necessarily be inconclusive but a brief consideration of "severance" decisions of appel-

[30] Wheaton v. Peters, 33 U.S. (8 Pet.) 591, 592 (1834).
[31] BLACK, LAW DICTIONARY 1540 (4th ed. 1951).
[32] 247 Iowa 1380, 78 N.W.2d 863, 865 (1956).
[33] 2 BLACKSTONE * 180, 185-86.

late courts of other states may draw attention to certain doubtful areas and enable the attorney to advise against any proposed action which may sever a joint tenancy holding or, where severance may have inadvertently occurred, to restore the joint tenancy by appropriate means so that the right of survivorship is not unintentionally defeated.

Particular acts or occurrences as effecting a severance.

Conveyance. It is agreed everywhere that a conveyance of his interest by one joint tenant, whether to a stranger or to a co-tenant, severs the interest conveyed and the grantee holds as a tenant in common. After a severance has occurred in this manner, reacquisition of the interest by the grantor will not reinstate the joint tenancy.[34] But if three or more persons hold as joint tenants, conveyance of the interest of one will not destroy the joint tenancy entirely; the effect of the conveyance is merely to sever the interest conveyed. Thus, if three persons hold as joint tenants, a conveyance by one to a stranger severs the grantor's interest and his grantee holds an undivided one-third interest as a tenant in common, while the other two of the original joint tenants hold an undivided two-thirds interest as joint tenants. Even if the conveyance in this situation is to one of the other co-tenants, the conveyance only severs the interest conveyed. For example, *A, B* and *C* are joint tenants. *A* conveys his interest to *B*. Title now vests in *B*, as tenant in common, an undivided one-third interest, and in *B* and *C* as joint tenants, an undivided two-thirds interest.[35]

Smith v. Smith[36] involved a conveyance to father and son, as joint tenants, the deed including this provision: "It is a part of the consideration for which this deed is given that neither of the parties hereto shall or can sell, deed, mortgage, or in any way incumber or dispose of his interest in said premises or any part thereof without the consent of the other party in writing." The court held that the restrictive paragraph was repugnant to the grant and an illegal restraint on the inherent right of alienation and therefore void. The writer of the annotation following the report of this decision in AMERICAN LAW REPORTS is somewhat critical of the decision and comments as follows:

> Therefore, as abstractly considered, there is at least some plausibility in the suggestion that a tenant in common, and particularly a joint tenant, having a natural continued interest in his cotenant's continued ownership,

[34] Scymczak v. Scymczak, 306 Ill. 541, 138 N.E. 218 (1923).
[35] OGDEN, CALIFORNIA REAL PROPERTY LAW § 3.5 (citing Shelton v. Vance, 106 Cal. App. 2d 194, 234 P.2d 1012 (Dist. Ct. App. 1951)).
[36] 290 Mich. 143, 287 N.W. 411 (1939).

should be able to enforce a stipulation contained in the conveyance to them that neither should alien without the consent of the other. The provision affecting such persons, it may be observed, is not subject to the objection which arises when a grantor, parting with all interest in premises, attempts to provide that the same shall not be aliened.[37]

Contract to convey. A contract by one joint tenant to convey his interest constitutes a severance.[38] Where the question has arisen, the courts have divided concerning the effect of a contract for the sale of joint tenancy property executed by all the joint tenants. In Wisconsin[39] and Kansas[40] it has been held that severance did not result in this situation. In Iowa[41] and Nebraska[42] the opposite view has been taken. The opinion in the Iowa case suggests that the vendors might continue to hold their interests in joint tenancy if the contract indicated in some manner that such was their intention. The principal criticism of the rule that a contract for the conveyance of joint tenancy property, executed by all joint tenants, effects a severance is that if the contract is silent in that regard there is no basis for a presumption or inference that the parties intended to destroy the right of survivorship in their remaining interest in the land; and, if destruction of the unities is deemed controlling, there has been no such destruction since none of the unities have been disturbed, the interest and rights of each joint tenant still being equal in every respect.

When all joint tenants execute a contract to sell the joint tenancy property and intend to hold the vendor's interest in joint tenancy, that intent will probably be controlling if there is included in the contract an express provision to the effect that the vendors' interest in the land and their right to payments under the contract are to be held in joint tenancy with right of survivorship. In the absence of such provision in the contract, title insurers will not insure that full legal title vests in the surviving joint tenant(s) upon the death of one prior to conveyance in fulfilment of the contract; title will be insured only upon the merger of the claims or interests of the surviving joint tenant(s) with the claims or interests of those who would succeed to the decedent's estate if execution of the contract effected a severance of the joint tenancy.

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[37] 124 A.L.R. 223 (1940).
[38] Kozacik v. Kozacik, 157 Fla. 597, 26 So. 2d 659 (1946); Naiburg v. Hendriksen, 370 Ill. 502, 19 N.E.2d 348 (1939).
[39] Simon v. Chartier, 250 Wis. 642, 27 N.W.2d 752 (1947).
[40] Hewitt v. Biege, 183 Kan. 352, 327 P.2d 872 (1958).
[41] *Re* Baker's Estate, 247 Iowa 1380, 78 N.W.2d 863 (1956).
[42] Buford v. Dahlke, 158 Neb. 39, 62 N.W.2d 252 (1954).

Mortgage. At common law under the title theory of mortgages, a mortgage by one joint tenant effected a severance and the joint tenancy was not restored on release of the mortgage.[43] Generally, in lien theory states a mortgage by one joint tenant does not sever the joint tenancy,[44] but there is authority to the contrary.[45] In Indiana, when one joint tenant mortgages his interest, the rule appears to be that "to the extent of the mortgage lien the right of the survivor will be destroyed or suspended, and the equity of redemption, at the death of the tenant, will be all that will fall to the surviving companion."[46]

At least in lien theory states, there appears to be no decision which holds that a mortgage of joint tenancy property, executed by both or all joint tenants, effects a severance of the joint tenancy.

Judgment. The lien created by entry of a judgment against a joint tenant does not result in severance. Levy made under execution on the interest of the debtor does not sever the joint tenancy unless under the law of the particular jurisdiction the levy is made by actual seizure of the property, resulting in transfer of possession to the sheriff.[47] Sale pursuant to the levy of execution prior to death of the judgment debtor does sever the joint tenancy in most jurisdictions. The effect of redemption must be regarded as unsettled. In Washington, subject to three specific exceptions, the purchaser at a sale under execution "from the day of sale until a resale or redemption . . . shall be entitled to the possession of the property. . . ."[48] The effect of sale under execution is therefore, in the usual situation, to destroy the unity of possession. On the other hand, if the judgment debtor redeems, "the effect of the sale is terminated and he is restored to his estate."[49] Likewise, the effect of death of the judgment debtor after sale but prior to expiration of the period for redemption appears not to be settled.

Partition. It has been held in California that it is not the commencement of an action for partition which causes a severance but only the judgment in the action which has that effect.[50] In Washington, what

[43] 4 THOMPSON, REAL PROPERTY § 1780 (repl. 1961).
[44] People v. Nogarr, 164 Cal. App. 2d 591, 330 P.2d 858 (Dist. Ct. App. 1958).
[45] "In jurisdictions in which a mortgage ordinarily operates to transfer the legal title, a mortgage by a joint tenant, which involves such a transfer, will no doubt cause a severance of the joint tenancy. The same effect has been imputed to a mortgage in at least one state in which a mortgage does not involve a transfer of the legal title." 2 TIFFANY, REAL PROPERTY § 425, at 210 (3d ed. 1939) (citing Wilken v. Young, 144 Ind. 1, 41 N.E. 68 (1895)).
[46] Wilken v. Young, 144 Ind. 1, 41 N.E. 68 (1895).
[47] Van Antwerp v. Horan, 390 Ill. 449, 61 N.E.2d 358 (1945).
[48] RCW 6.24.210.
[49] RCW 6.24.160.
[50] Teutenberg v. Schiller, 138 Cal. App. 2d 18, 291 P.2d 53 (Cal. Dist. Ct. App. 1955).

would be the situation if a joint tenant died after entry of judgment of partition but before sale by the referees or before entry of a decree confirming the referees' report specifying the portions of the land to be allotted to each party? This question can be important in connection with severance since a "judgment of partition while final as determining the interests of the parties and their rights to partition is interlocutory as to the mode of partition, whether in kind or by sale."[51]

Bankruptcy. By operation of law, title to all non-exempt property of the bankrupt vests in the trustee, when appointed, as of the date of filing of the petition.[52] Thus the bankruptcy of a joint tenant operates to vest his interest as joint tenant in all non-exempt property in the bankruptcy trustee[53] and results in severance of the joint tenancy. Subsequent abandonment by the trustee of the joint tenancy interest should not have the effect of reinstating the joint tenancy. Allowance by the bankruptcy court of a bankrupt joint tenant's interest as exempt property should not be deemed a severance because title to exempt property does not pass to the trustee (although the trustee does have a temporary right of possession of exempt property to enable him to perform his duty of setting the exemption aside).[54]

Divorce. "Divorce, in and of itself, does not affect the joint tenancy of husband and wife."[55] Since under the Washington statute[56] the court in a divorce action has power to make "such disposition of the property of the parties, either community or separate, as shall appear just and equitable," there can be no doubt of the court's power to make specific disposition of joint tenancy property of the parties. If such property is not disposed of by property settlement agreement or by the decree of divorce, its status will remain unchanged (since it is assumed that joint tenancy interests are necessarily held as separate property) unless the court should adopt a rule founded on the theory that a joint tenancy involving husband and wife was created because of the special trust and confidence arising from the marital relationship and when that relationship is terminated by divorce the presumed intention of the parties would be to eliminate the right of survivorship.

Acts, agreements or contracts inconsistent with continuation of a joint tenancy. Any act, agreement or contract inconsistent with con-

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[51] 4 THOMPSON, REAL PROPERTY § 1822, at 271 (repl. 1961).
[52] 11 U.S.C. § 110 (1958).
[53] Mangus v. Miller, 317 U.S. 178 (1942).
[54] COLLIER, BANKRUPTCY MANUAL § 70 (2d ed. 1960).
[55] Poulson v. Poulson, 145 Me. 15, 70 A.2d 868, 870 (1950).
[56] RCW 26.08.110.

tinuation of a joint tenancy constitutes a severance but there is difficulty in determining whether particular acts, agreements or contracts fall within this rule. Without attempting an exhaustive enumeration, the following will illustrate possible applications of this rule.

(a) Execution by the joint tenants of a joint will or of mutual wills, disposing of the property or interest held in joint tenancy other than to the surviving joint tenant should effect a severance. While the mere execution by one joint tenant of a will which devises his joint tenancy interest in a manner inconsistent with the joint tenancy and makes other provision for the surviving joint tenant is not technically a severance, the right of survivorship may be defeated if the will becomes operative and if the surviving joint tenant elects to take under the will.[57]

(b) A specific agreement to sell joint tenancy property and divide the proceeds equally effects a severance.

(c) Execution of a partnership agreement involving property held in joint tenancy may sever the joint tenancy.

(d) Execution of a community property survivorship agreement containing general language indicating an intent that all property of either spouse, of any nature and however acquired, shall be held as community property and shall be subject to operation of the agreement will probably be treated as a conversion of joint tenancy ownership to community property ownership.

TERMINATION AND SURVIVORSHIP

Proof of termination. The Washington law makes no provision for establishing of record the fact of death of a joint tenant and the consequent "passage"[58] of the decedent's interest to the surviving joint tenant(s). In California[59] and in a number of other states a "short form" termination proceeding is required by statute, the obvious pur-

[57] See annot. 60 A.L.R.2d 789 (1958).

[58] While the title of Wash. Sess. Laws 1961, ch. 2, includes the words "allowing property rights of a deceased joint tenant to pass immediately upon death to the surviving joint tenant" and further refers to "the transfer of property to surviving joint tenants," the correct concept of the effect of death of a joint tenant is stated by two writers as follows: "A joint tenancy estate is a *single estate* held by two or more persons jointly, such joint tenants holding as though they collectively constituted but one person, a fictitious entity. When the first joint tenant dies, his individual right to share enjoyment of the land ceases and the estate continues in the survivor or survivors." OGDEN, CALIFORNIA REAL PROPERTY LAW § 3.1.

"'Survivorship' is the important incident of joint tenancy. The operative effect of this incident is to free the surviving joint tenant or tenants from the claims or interests of the deceased joint tenant. The theory is that each joint tenant has total ownership of the asset in addition to his share interest relevant only in determining inter vivos relationships. Taking by survivorship then does not amount to an inheritance or even a transfer at the death of one." Cross, *Joint Tenancy for Washington?* 35 WASH.L.REV. 292, 293 (1960).

[59] CAL. PROB. CODE § 1170.

pose of which is to establish of record the fact of death of the joint tenant and the clearance of succession tax liability.

The matter of creditor's rights creates a further problem in connection with termination of a joint tenancy since the Washington law is apparently unique in its treatment of creditors of a joint tenant. Section 1 of the act provides that "such transfer shall not derogate from the rights of creditors." Whether the transfer referred to in this proviso means the original transfer of title to the joint tenants or the "transfer" of title to the surviving joint tenant(s) occurring at the death of one joint tenant (see the title of the act, which refers to the *transfer* of property to *surviving* joint tenants) has already provoked much discussion. Almost identical language protecting creditors appears in RCW 26.16.120, authorizing community property survivorship agreements, and it has been assumed for years by title insurers, and apparently by the bar, that this provision enabled creditors of a deceased spouse to reach a decedent's interest in community property subject to such agreement to the same extent as other assets of the decedent's estate. It would not appear to be an unwarranted inference, in view of the similarity of the language chosen and the similarity in effect of a community property survovorship agreement and a joint tenancy with right of survivorship, that the initiative measure was intended to allow creditors identical rights with respect to each of these survivorship devices. While recognizing that a question of interpretation exists, title insurers will insure title in a surviving joint tenant without exception of rights of creditors of the decedent (and without exception of funeral expenses and other indebtedness incurred after death but attributable to the decedent) only on the furnishing of proof satisfactory to the insurer that all debts have been paid or that adequate provision for payment has been made.

In some instances the estate of a deceased joint tenant will be probated because the estate includes assets of substantial value which are not held in joint tenancy. In those cases, joint tenancy property will no doubt be included in the inventory for the limited purpose of determination of succession tax liability. The probate proceeding will of course establish of record the fact of death of the joint tenant and the claims of creditors will be paid or barred as in other cases, so that all questions related to termination of the joint tenancy are resolved of record.

In cases in which a deceased joint tenant's estate will not be probated, clearance of inheritance tax pursuant to the provisions of RCW 83.24

will normally be required. Waiver of this requirement by title insurers will undoubtedly be limited to the relatively few cases in which even the most cursory inquiry clearly establishes that the value of the decedent's estate (including the *entire* value of all joint tenancy property) is so small as to be within the exemptions allowed by the inheritance tax statutes.

Section 1 of the initiative measure recites that "joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings," and quite clearly the proponents of the measure hoped to avoid the expense and delay of any formal termination proceeding in connection with joint tenancies. Proposal of even a simplified and relatively inexpensive termination proceeding would therefore probably not be met with public (or legislative) favor. Nevertheless, even the most grudging recognition that "marketability of title" retains a place in our system of real property law will indicate the need of some form of record proof of termination of a joint tenancy holding by death.

In the absence of statutory provision for a prescribed termination proceeding it is expected that the courts of Washington will sanction the use of affidavits to complete the record of title to real property when ownership is affected by death of a joint tenant whose estate is not probated. Accordingly, before insuring title in a surviving joint tenant, title insurers will require the recording of an affidavit executed by the survivor (or other person familiar with the decedent's affairs), to which is attached a certified copy of certificate of death of the deceased joint tenant. The affidavit should 1) establish that the decedent named in the death certificate is identical with the joint tenant whose interest is allegedly terminated by death; 2) impart information regarding succession tax liability and probate proceedings which might affect the interest of the deceased joint tenant; 3) impart any pertinent information regarding acts or occurrences not disclosed by the public records but possibly effecting a severance of the joint tenancy before the death of any joint tenant; 4) include an affirmative representation regarding payment of all debts of the deceased joint tenant; and 5) include a direct agreement to indemnify against loss arising by reason of misrepresentation of fact.

Survivorship. Under certain circumstances the right of survivorship will be defeated even though the joint tenancy is terminated by death of a joint tenant and not by severance prior to death.

One such circumstance is the wilful and unlawful killing of one joint tenant by another. RCW 11.84.020 provides that no slayer "shall in any way acquire any property or receive any benefit as the result of the death of the decedent." RCW 11.84.050 provides for the disposition of property in which the slayer and decedent held joint tenancy interests. RCW 11.84.120 affords some protection to purchasers (mortgagees are not mentioned) from the slayer for value and without notice.

In the case of simultaneous death of joint tenants, RCW 11.05.030 makes provision for disposition of the joint tenancy property. If two joint tenants owning the entire property die simultaneously, the property "shall be distributed one-half as if one had survived and one-half as if the other had survived." If there are more than two joint tenants and all have died simultaneously, "the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants."

The status of title to joint tenancy property when a joint tenant is an absentee within the contemplation of RCW 11.80 is a subject open to almost endless speculation. The final distribution of the absentee's estate at the end of the period specified by the statute[60] is not tantamount to a determination that death has occurred. Even if it were, the actual date of death would be of primary importance in disposing of questions of severance and survivorship in connection with joint tenancy property. The relatively few Washington cases dealing with presumption of death arising from absence are of little assistance in this context.

Finally, mention has been made elsewhere in this article of the possibility that the right of survivorship may be defeated, even in the absence of severance, in the event of disposition of a joint tenant's interest by will and election by the surviving joint tenant to take benefits under the will.

CONCLUSION

The writer has observed no attitude of prejudice against the principle of joint tenancy ownership on the part of representatives of title insurance companies in this state or elsewhere. In many other states, ownership of real property in joint tenancy has proved desirable from the point of view of landowners (at least when used with discrimination and upon advice of competent counsel). Joint tenancy in other

[60] RCW 11.80.100.

states has presented no insuperable problems in the area of title insurance and none should arise in Washington if the courts and the bar of the state will develop and observe rules and practices which will lead to reasonable certainty in dealing with joint tenancy titles. In this regard, it should make little difference whether the Supreme Court of Washington adopts a "liberal" or "conservative" attitude toward joint tenancy—once the Court's approach is known and a few basic rules are established, attorneys and title insurers can surely reach reasonably firm conclusions in dealing with joint tenancy titles. Until some degree of certainty in the law of joint tenancy in Washington is developed, however, this admonition appears to be appropriate:

> Joint tenancy, then, may be like marriage—a relationship not to be rushed into, or entered upon lightly, but soberly and deliberately, and in fear of taxes and future interpretations by our Supreme Court.[61]

[61] From a pamphlet entitled *Joint Tenancies in Arizona*, written by Rhes H. Cornelius, member of the Arizona Bar and an officer of Phoenix Title & Trust Company.