

HOUSE BILL REPORT

SB 5067

As Reported By House Committee On:
Judiciary

Title: An act relating to joint tenancy.

Brief Description: Altering the provisions concerning joint tenancy.

Sponsors: Senators A. Smith, McCaslin and Nelson.

Brief History:

Reported by House Committee on:
Judiciary, March 12, 1993, DP.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Johanson;
Mastin; H. Myers; Riley; Scott; and Wineberry.

Staff: Bill Perry (786-7123).

Background: A "joint tenancy" is a form of property ownership in which two or more persons jointly own something. Each joint tenant has the same undivided interest in the whole of the jointly owned property. Joint tenancies may arise in any number of ways. Sometimes they arise incident to a marital community. A joint tenancy held in the names of a husband and wife is presumed to be community property.

Case law in Washington indicates that with respect to separate property, i.e., noncommunity property, a joint tenancy is severable at will by any tenant. Severance of a community property joint tenancy may allow significant federal estate tax savings. There is some concern that current joint tenancy statutes could be interpreted to deny the right of unilateral severance of a community property joint tenancy.

Summary of Bill: Any joint tenancy, including a community property joint tenancy, may be severed at will by any tenant. Property interests resulting from the severance of

a joint tenancy held by a husband and wife are presumed to be community property.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will clarify the status of community property joint tenancies. It will allow taxpayers to correct tax planning errors that otherwise might produce significant federal estate tax liability.

Testimony Against: None.

Witnesses: Noreen Nearn, Washington State Bar Association (pro).