

Sec. 174 64.28.040 Joint tenancy interests held by husband and wife.

Joint tenancy interests held in the names of a husband and his wife (whether or not in conjunction with others) are presumed to be their community property, the same as other property held in the name of both husband and wife. Any such interest passes to the survivor of the husband and wife as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

Comment: The provision is designed to assure the step up basis for both halves of community property upon the death of the first to die of a husband or wife. See Internal Revenue Code §1014(b)(6). In order to insure this treatment, the section provides that joint tenancy interests held by husband and wife (in both names) will be treated as community property in all respects, except that the interest will pass to the survivor as is otherwise the case for joint tenancy property. This would be the result of a specific community property agreement between the husband and wife under RCW 26.16.120 and also avoids the potential risk in creating a form of property interest that is joint tenancy in all respects, except that it is designated "community property." See J. Parks, "Critique of Nevada's New Community Property with Right of Survivorship," 10 Comm. Prop. J. 5 (1983).

The section is based on the policy determination that when husband and wife put property or receive property in joint tenancy form, they intend that it pass to the survivor upon the death of the first to die, but in all other respects consider it

to be community property. The section would not preclude an argument that the joint tenancy interest was not entirely community property, as is the case under present law with property acquired in the name of both husband and wife, depending on separate property contributions by either. However, the section would probably not negate equal ownership treatment for tax purposes under Internal Revenue Code §2040 with respect to joint tenancy property held by husband and wife.