



Real Property Interests Between Unmarried Couples



Note: This guide is intended to provide general legal advice regarding how a court will determine who owns a property if an unmarried couple owns a property jointly. If you need specific legal advice regarding your situation, please contact an attorney.

What is Real Property?

In Idaho, real property, or real estate, includes:

1. Lands, rights to land, ditch, and water rights, and mining claims;
2. That which is affixed (permanently attached) to land; and
3. That which is appurtenant to land.*

See [Idaho Code Section 55-101](#). (For a definition of “lands” see [Idaho Code Section 55-101A](#).)

What Does “Appurtenant to Land” Mean?*

Something that is appurtenant to land is something that is affixed to the land and is immovable or essentially immovable. Examples of appurtenances could include in-ground swimming pools, a fence, or shed that are all permanently fixed to the land.

Step 1: Determine What Interest Does Each Person Have in the Property?

What is an “Interest” in Property?

An “interest” in property refers to the extent of a person's or entity's rights in a property. It deals with the percentage of ownership, time period of ownership, and rights to transfer the property or to take out liens on the property.

Co-Interests and Tenants-in-Common

Additionally, Idaho law explains that “every interest in real estate” given to two (2) or more persons will be a tenancy in common, unless the document said otherwise, or unless the property was given to executors or trustees. See [Idaho Code 55-508](#).

Therefore, an unmarried couple would have a tenancy in common to a property if both parties’ names were on the deed and the deed did not state otherwise.

Step 2: What Amount of Interest Does Each Tenant-in-Common Have in the Property?

Can Tenants-in-Common Have Different Interests in the Same Property?

General Rule: Equal Interests

The Idaho Supreme Court recently decided that if a deed does not specify the amount of interest that each co-tenant in common has in a property, the Court will assume that both co-tenants have equal interests in the property. See *Wilson v. Mocabee*, 167 Idaho 59, 467 P.3d 423 (2020). Therefore, generally in Idaho, an unmarried couple would have equal interests in a property if that property was deeded in both person’s names, unless one of the exceptions above applies or the deed said otherwise.

However, there are exceptions to this general rule – please see the next page for exceptions.

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(Continued from Page 1)

Exceptions to the General Rule of Equal Interests of Tenants in Common

What if the Parties Contributed Different Amounts to the Purchase Price of the Property?

Exception 1: Unequal Financial Contributions

In the *Wilson v. Mocabee* case, after the unmarried couple split up, the girlfriend, who had paid for the property in full and who also included her boyfriend's name on the deed, sued her former boyfriend to quiet title to the property (to determine each of their interests in the property). She argued that because she had paid in full for the property, she should have all rights to the property and her ex-boyfriend should have none.

The Idaho Supreme Court agreed with her and stated that the assumption that a deed to property gives equal interests to all cotenants can be disproven by evidence that each party's contribution to the purchase price of the property was unequal.

Exception: In other words, if one party can prove to the court that they contributed more to the purchase price of the property, then the unmarried couple may not have equal interests in the property.

What if the Interest in Property Was a Gift?

Exception 2: If the Interest in the Property Was a Gift to One Party from the Other

The Idaho Supreme Court also determined in *Wilson v. Mocabee*, that if one person can show that the other person intended some amount of interest in the property as a gift, without expecting payment or compensation, this may be evidence for a person to claim a property interest even where they did not contribute to the purchase price of the property. The person must have had "donative intent", or the intent to gift an interest in the property.

However, the Court also stated that simply placing someone else's name on a deed is not conclusive proof of someone's "donative intent" and is not enough for someone to claim an interest in the property. Donative intent must be proven when evaluating the totality of surrounding circumstances surrounding a property transfer or creation of a deed.

Exception: In other words, where a person claims that the other person gifted them an interest in the property, without expecting any payment or compensation, the person claiming that interest must prove that the other person intended to gift them an interest in the property based on all the circumstances surrounding the transfer of the property (the fact that the other person put his or her name on the deed is not enough to prove an interest in the property by gift).

Attorney Services

You may represent yourself or hire an attorney to file an action to quiet title or an action for partition if you need to divide real property between an unmarried couple where both parties' names are on the deed. If you need help finding an attorney, contact the following organizations:

- [Idaho Legal Aid Services, Inc.](#)
- [Idaho Volunteer Lawyers Program](#)
- [Idaho State Bar Association Attorney Referral Service](#)