Douglas S. Tingvall
*Attorney at Law*
12015 93rd PL NE
Kirkland, WA 98034-2701
425-821-2701/Fax 896-0390
DougTingvall@RE-LAW.com



**MUST BOTH HUSBAND AND WIFE SIGN AGREEMENT TO BUY OR SELL COMMUNITY REALTY?**

Many people believe that an earnest money agreement to buy or sell community realty is not enforceable unless it is signed by both husband and wife. As a general rule, that is true; however, as with most general rules, there are several exceptions.

The Washington statutes that apply to the acquisition and disposition of community realty provide:

> (3) Neither spouse shall sell, convey, or encumber the community real property without the other spouse joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses.
>
> (4) Neither spouse shall purchase or contract to purchase community real property without the other spouse joining in the transaction of purchase or in the execution of the contract to purchase.

RCW 26.16.030.

A mere reading of these sections might lead one to believe that both spouses must actually *sign* the agreement in order for it to be binding. However, our courts have construed these provisions broadly to mean that both spouses must have "joined" or "participated" in the transaction. The "joinder" or "participation" requirement is satisfied if there is sufficient evidence of authorization, ratification, or estoppel. It is *not* necessary that both spouses literally sign the document.

In *Campbell v. Webber,* 29 Wn.2d 516 (1947), the Supreme Court held that the purchasers were entitled to specific performance of an agreement to sell a gas station, even though the selling wife had not signed the earnest money agreement. The court found sufficient evidence of the wife's participation in the sale from the following facts:

> "[The selling wife] was present throughout the negotiations leading to the signing of the agreement. She indicated her willingness to abide her husband's decisions. She received and deposited in the bank the check given her husband by [the purchasers] as part of the purchase price of the property. She knew that [the purchasers] took possession of the property and knew of her husband's sale of gasoline to them."

29 Wn.2d at 524.

Similarly, in *Daily v. Warren,* 16 Wn. App. 726 (1977), the Court of Appeals held that the sellers were entitled to collect on the promissory note given as earnest money for the purchase of a tavern, even though the buying wife had not signed the earnest money agreement or the promissory note. Again, the court found sufficient evidence of the wife's participation in the transaction:

> "(1) [The buying wife] knew her husband was interested in purchasing the tavern; (2) she inspected the tavern with an eye to exercising her

*This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.*

> right to approve or disapprove, as she had done in the past; (3) she expressed approval to [her husband] to proceed without her in further negotiations for its purchase; (5) she knew of and approved the use of community funds for the original money deposit; (6) she knew [her husband] had actually signed a new agreement to purchase [and believed he had committed additional community funds]; (7) she knew she had been listed as a "partner" on liquor license applications; (8) she knew of the arrangement under which the two men started working at the tavern; and (9) she acknowledged the purchase would have been consummated had [their partner] not become ill."

16 Wn. App. at 731.

On the other hand, in *Colorado Nat'l Bank v. Merlino,* 35 Wn. App. 610 (1983), the Court of Appeals held that the mere signing of a joint personal income tax return, on which a deduction was taken for interest paid on the purchase money note, did not satisfy the joinder requirement.

As can be seen from these and many other cases, it cannot be said with certainty that an earnest money agreement involving community property is not enforceable simply because one of the spouses has not signed it.

*This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.*