JOINT OWNERSHIP OF PROPERTY IN OREGON CAN CREATE A LEGAL PARTNERSHIP EVEN IF THAT WAS NOT THE INTENT OF THE PARTIES

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Prior to the adoption of the Uniform Partnership Act, the long standing rule in Oregon had been that the essential test for determining whether a partnership existed was whether the parties intended to create a partnership. Because there are many legal consequences that flow from a partnership, the Oregon courts found that they should not surprise the parties into such a relationship against their will. This basic rule of partnership law was altered when Oregon adopted the Uniform Partnership Act.

The Uniform Partnership Act makes it easier to find that someone is part of a partnership even if none of the parties intended to create a partnership. ORS 67.055(4) provides that the factors for determining whether a partnership exists include the person's receipt of or right to receive a share of profits in the business; the expression of an intent to be partners in the business; their participation or right to participate in control of the business; their sharing or agreeing to share losses of the business or liability for claims by third parties against the business; and their contributing or agreeing to contribute money or property to the business.

Oregon statutes provide that joint ownership of real property (joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership) does not create a partnership in Oregon even if the co-owners of the property share profits or gross returns that result from use of the property. ORS 67.055(4)(b)and (c). However, the Oregon Court of Appeals has found that a partnership was created when two persons jointly owned several commercial properties even though the evidence showed that neither party intended to create a partnership and no partnership tax return had ever been filed.