

MADSEN, J. (concurring)—The character of property as separate or community is established at acquisition, not at the time of payment, delivery, or conveyance. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). Property acquired before marriage is presumptively separate property. *Id.* Once established, separate property retains its separate character unless there is a direct and positive evidence of a change in character. *Id.* I agree with the lead opinion that joinder of Bobby Borghi on a fulfillment deed issued during marriage does not, by itself, demonstrate a sufficiently clear intent by Jeanette Borghi to transform her separate property into community property. The separate or community character of property is not determined by the title name under which it is held. In this case there is no evidence explaining why Mr. Borghi's name was included on the deed and no other evidence that Ms. Borghi intended that her separate property become community property.

I write separately because the lead opinion says that only a writing may serve as evidence in determining whether Ms. Borghi intended to transform her separate real property into a community asset. Lead opinion at 10, 13. Since there is no evidence, written or otherwise, bearing on the question, I do not believe this case requires us to decide what type of evidence is sufficient to overcome the

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separate property presumption and I would not do so.

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AUTHOR:

Justice Barbara A. Madsen

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WE CONCUR:

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