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GENERAL CHARACTERISTICS OF DIFFERENT WAYS TO HOLD TITLE TO REAL ESTATE

THE FOLLOWING INFORMATION IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF THE THREE COMMON WAYS OF HOLDING TITLE AND IS NOT PROVIDED FOR THE PURPOSE OF ADVISING YOU HOW TO TAKE TITLE.

IF FURTHER INFORMATION IS DESIRED ABOUT CREDITORS RIGHTS AGAINST THE TITLE, ADVANTAGES AND DISADVANTAGES WITH RESPECT TO ESTATE PLANNING AND OTHER PRACTICALITIES, YOU SHOULD SEEK LEGAL COUNSEL FROM YOUR ATTORNEY OR RETAIN AN ATTORNEY FOR ADVICE IN THESE MATTERS.

In order to properly prepare the mortgage documents we require information from you as to how you intend to take title to the real estate.

The three most common ways two or more persons may hold title to real estate are:

1. TENANTS IN COMMON
2. JOINT TENANTS
3. TENANTS BY THE ENTIRETY

What Happens Upon Death

1. When title is held as Tenants in Common, it is necessary to probate the estate of the deceased before the real estate may be sold or mortgaged. There is no right of survivorship.

2. When the title is held a Joint Tenants or as Tenants by the Entirety, the title automatically succeeds to the surviving title holder or title holders without the necessity to probate the estate of the deceased before the real estate may be sold or mortgaged.

3. In any case of death of an owner of real estate, whether Tenants in Common, Joint Tenants or Tenants by the Entirety, it is necessary to procure a release of the estate tax or taxes which automatically, by statute, become a lien on the property.

Who has Control and Management?

1. When title is held as Tenants in Common or Joint Tenants, the rents, control, management and possession of the property is in the owners equally, in the absence of an agreement to the contrary, but the individuals can divest themselves of their individual share in the property without the joining in of the others.

2. Under the provisions of M.G.L. c.209, section 1, when title is held as Tenants by the Entirety, (which is limited to husband and wife) rents, control, management and possession of property are in the owners equally. Chapter 209 further provides:

"...The interest of a debtor spouse in property held as tenants by the entirety shall not be subject to seizure or execution by a creditor of such debtor spouse so long as such property is the principal residence of the non-debtor spouse; provided, however, both spouses shall be liable jointly or severally for debts incurred on account of necessaries furnished to either spouse or to a member of their family."

Neither the husband nor the wife can divest themselves of their interest in the property to any one except to each other so long as the marriage lasts without the signature of both."

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