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Three ways to retain ownership of a home or property

I recently explained the two most common forms of deeds that buyers and sellers use to transfer ownership (the title) of their home or property — Warranty and Quitclaim. Once that decision is made, the next step is to determine how to “hold title” to the real estate, especially when there are two or more buyers/owners involved. One person taking title to property as an individual owner will hold title to the property as a sole owner. For the purposes of this column, however, let’s assume that we have multiple buyers. The following is a primer on the three ways to hold property ownership: (1) Tenancy in Common, (2) Joint Tenancy and (3) Tenancy by the Entirety.

I: Tenancy in Common

In Rhode Island, this is the default form of property ownership. Tenancy in Common allows property owners to own different shares of the same property. For instance, X, Y and Z all own “Blackacre,” but X owns 50 percent, Y owns 40 percent and Z owns 10 percent. X, Y and Z are tenants in common. Each of them are allowed to use the whole property, regardless of their respective interest, and each owner can sell or transfer his/her percentage ownership to someone else without the consent of the other owners. Two important distinctions: (1) Failure to state a certain percentage interest ownership in the property, in the deed, will presume equal shares between the property owners; and (2) If one owner dies, his/her interest in the



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property will pass through his/her estate — not to the other property owners.

II: Joint Tenancy

Joint Tenancy differs significantly. For starters, joint tenants own equal shares of the property. Joint tenancy also has “a right of survivorship” associated with it. This means if one owner dies, the ownership interest does not pass to his/her estate as it does for tenants in common, but rather passes to the other joint tenants. For example, X and Y own Blackacre as joint tenants. X dies. Y now owns Blackacre outright. Conveniently, this avoids probate of the property.

Like tenants in common, joint tenants are allowed to use the whole property and to transfer or sell their interest to someone else. But if a joint tenant transfers his/her interest in the property, they “destroy” the original joint tenancy. Let’s say X, Y and Z own Blackacre as joint tenants. Each owns one-third interest in the property. If X transfers his interest to A, A will now own Blackacre with Y and Z as tenants in common, while Y and Z will continue to hold title as joint tenants between themselves.

A pitfall to the joint tenancy form of ownership is that if one of the co-tenants has debt,

creditors can file liens against that co-tenant’s interest in the property. If you, as a property owner, want the joint tenancy form of property ownership, it must be clearly stated in the deed. Otherwise, the default form of ownership will be tenancy in common.

III: Tenancy by the Entirety

Tenancy by the Entirety is a form of joint tenancy. This form of ownership is available only for those who are married at the time they take ownership of a property. Like joint tenancy, tenancy by the entirety must be stated in the deed and involves a right of survivorship.

But unlike joint tenancy, tenancy by the entirety protects each spouse’s portion of the property from creditors or debt liability caused by the other spouse. If a non-debtor spouse survives a debtor spouse, the surviving non-debtor spouse will own the property free and clear of the debt/lien of the deceased debtor spouse.

The form of property ownership can be changed, at any time, with the recording of a deed by the owners. So if you want to know whether you are holding title to your property in the most appropriate category, seek the advice of an attorney. If it is determined that a different form of ownership would be best for you, the recording of a deed will remedy the situation.

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