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BUSINESS TRANSACTION NEWSLETTER

FORMING A PARTNERSHIP IN TENNESSEE

In the case of Meadows v. Harrison, the Court dealt with the issue of whether Meadows and King had formed a partnership. Meadows and King ordered a form document from E-Z Legal Forms, Inc. and signed it in which it said that they entered into a general agreement to form a partnership. King later acquired a parcel of real property and encumbered it with a deed of trust. Then, he signed a Quitclaim Deed transferring the property to the partnership, subject to the deed of trust. Three years later, King died. At that point, Meadows paid off the remaining balance on the mortgage and obtained a release for the mortgage. Meadows then filed a Complaint For Partition against King's heirs because King had died. The heirs objected, denying that there was a partnership. Some of the facts that came out in the trial of the case were that the partnership never filed a tax return, the partners never used the bank account they opened for the partnership, and that company mail was sent to one of the partners' personal addresses.

In the court ruling, the court found that there was a partnership. The court pointed out that the Tennessee Code defines a partnership as "an association of two or more persons to carry on as co-owners of a business or other undertaking for a profit." A partnership only can be created pursuant to a contract of partnership. However, such an agreement may be either express or implied. The court stated that the signed document and the deed transfer to the partnership were evidence of the intent of the parties. Even though there were no profits to share, the two partners shared the expenses related to the property for several years until King died. Under the facts in this case, the court found that the partners created a partnership.

MY RECOMMENDATION: With a partnership, as well as all other forms of entities, it is best to follow the formalities of the entity operation. Partnerships can be formed in a much looser form than can corporations, LLC's, or limited partnerships. However, it is in the best interest of the parties to operate with the formalities of a partnership. Although the facts in the Meadows case seemed clear that the court would find a partnership, Mrs. Meadows still incurred the cost of litigation and the appeal in order to have a court declare that the partnership existed. In the case, Mrs. Meadows attempted to recover her attorney's fees, the court did not allow such.

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