

Real Estate Co-Ownership Agreement Protects Owners

By former Principal Diane Fox

If you are thinking about acquiring residential real estate with a person to whom you are not married or with a family member other than your spouse (whether or not you and/or the other co-owner will be living in that property or leasing it to third parties), you should seriously consider entering into a written agreement governing your joint ownership of that property. While a co-ownership agreement (sometimes also called “tenancy in common agreement” or “co-tenancy agreement”) does not typically rise to the level of complexity inherent in the business entity arrangements generally used to acquire and own larger commercial properties, there are a few important points that co-owners of residential properties should be aware of.

For unmarried individuals, there are two ways property can be owned: (a) as tenants in common in which the percentages of ownership interest can be unequal, or (b) as joint tenants which requires that each owner have equal percentage ownership interests in the property. Upon the death of a joint tenant, his or her ownership interest automatically becomes owned by the surviving co-owner. However, upon the death of a tenant in common owner, his or her interest does not become owned by the other co-owner(s), but remains in the deceased owner’s estate and, absent a co-ownership agreement, will be distributed pursuant to that person’s Will in the event of death. Deciding on the type of ownership of the property is an important initial consideration when the property is acquired.

Regardless of how the property is titled, a co-ownership agreement is important to define the rights and obligations of each co-owner. For example, the agreement should spell out how mortgage payments, real estate taxes, insurance premiums, utility costs, repairs, maintenance and replacements of equipment within the property are to be shared. Also, one owner probably should not be permitted to incur costs for any repair or replacement without the consent of the other owner(s), or perhaps consent would be required only if the repair or replacement is above a certain specified dollar amount. The agreement should also address what happens if one owner fails to pay his or her share of the costs.

Of particular importance is what happens if one of the owners no longer wants to be a co-owner of the property or if one of the owners dies. Generally, the owner wanting to continue owning the property will not want a stranger to become his or her co-owner. Consideration should be given about how to determine the purchase price payable to the owner who no longer wants to participate in the co-ownership arrangement, how that price will be paid by the remaining co-owner(s), or whether the property should be put on the market and sold. In the event of the death of a co-owner, it is usually a good idea to have some time period within which either the estate of that owner must sell to the other owner or whether the parties will decide to sell the entire property.

A co-ownership agreement should also cover issues such as the rights of each co-owner to live in the property, a prohibition against any co-owner selling his or her interest to a third-party, and a prohibition against any co-owner leasing any part of the property or permitting any third-party to live in the property, in each event without the consent of the other co-owner(s).

If you are thinking about acquiring residential property with another person, we would be happy to assist you in preparing an agreement to set forth each party’s rights and obligations.