

Real Estate Co-Ownership Brief

A Series of Briefs on Legal Issues Regarding Co-Ownership of Real Property



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Buy-Sell Provisions of Co-Tenancy Agreements

By Anne E. Senti-Willis

When two or more persons jointly own real property, they don't always have the same goals and desires for the investment. As a result, it is often desirable to have a written agreement among the co-owners governing their relationship if an owner wishes to dispose of his interest in the property. These arrangements are often referred to as buy-sell agreements.

Buy-sell agreements generally give the remaining co-owners the right to purchase some or all of a particular owner's interest in a piece of real property upon the occurrence of one or more specified events. There are a variety of "triggering events" which may include the death of a co-owner, receipt by a co-owner of a bona fide third party offer to buy his interest in the property, the creation of a lien or an attempt to levy against the property, the bankruptcy of a co-owner, the dissolution of a co-owner's marriage or deadlock of the co-owners in management of the property. To coordinate the purchase process following the occurrence of a triggering event, buy-sell agreements contain provisions defining triggering events, establishing procedures and deadlines for exercising purchase rights and, most importantly, determining the purchase price and payment terms for the interest subject to purchase. The two most important issues facing co-owners desiring to enter into a buy-sell agreement are deciding what triggering events to include and how to value the interest that becomes subject to purchase.

If a co-owner wishes to sell his interest and obtains a bona fide offer from a third party, the buy-sell agreement may give the other co-owners the right to purchase the interest covered by the third party offer. Such a provision prevents outsiders who are not acceptable to all of the remaining co-owners from becoming co-owners.

A buy-sell agreement may also contain provisions aimed at preventing deadlock among the co-owners and a possible partition action on the property. For example, with a 50/50 ownership split in a piece of property, the buy-sell agreement might contain a provision triggered upon deadlock of the owners allowing one owner to offer to either sell his interest or purchase the interest of the other co-owner at a price offered by that co-owner. This would allow the co-owners to dissolve their joint ownership arrangement if they are not getting along, while encouraging a fair valuation by having one party set the price and allowing others to either buy or sell at that price.

Depending on the relationship of the co-owners, it may also make sense to include triggering events on death, divorce, bankruptcy, or encumbrance of the property.

In addition to spelling out triggering events, buy-sell agreements should also provide a valuation mechanism. Most often, this is done through an appraisal process, though there are a number of methods that can be used. If all co-owners can agree on an appraiser (or, better still, a value), the process, expense and time involved may be minimized. If there is a concern on reaching a fair value and all parties cannot agree on a single appraiser, there are a number of alternative structures. Each party may select its own appraiser, and if those appraisers agree on a value, the value holds. If the appraisers do not agree on a single value, those appraisers are often required to agree on yet another appraiser, whose value may rule. This option is often very expensive, and the process can take quite a long time. Alternatively, each party could appoint an appraiser and those appraisers, jointly and without actually performing an appraisal, could be required to agree on a single appraiser to value the property.

A buy-sell agreement can be a valuable tool to joint owners of real property. If adopted early in a joint ownership relationship, it can help avoid future disputes and provide each co-owner with clear expectations on how the co-ownership arrangement can be terminated without a lawsuit.

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