

Real Estate Co-Ownership Brief

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



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Terminating Tenants-In-Common Ownership – Partition Actions

By Stephen C. Gerrish

Do you remember how much fun you used to have playing with your cousins, brothers and sisters when you were all young, so long ago? You never dreamed you would all be business partners. And now, so many years later, after all of you have inherited and together own the family farm, can you even imagine how you are going to sever the relationship?

Whether you inherited property with family members or invested in a vacation home with your best friends, a tenancy-in-common has its complications, especially if one of the owners wants out. Having an exit strategy, a back-up plan or an escape route is always a good idea. Sometimes, however, with ownership of property as a tenant-in-common accompanied by emotional, legal and economic complications, it is very difficult to see clearly how you can preserve the value of your interest, and get out of it.

A tenant-in-common owns an undivided percentage interest in the whole parcel of land: “undivided” in the sense that the property interest is not formally divided into individual units belonging to each owner – the land is one whole parcel, with ownership split among more than one – no one owns or controls the whole, but every owner has the right to use the whole. Without agreement, the owner of an interest can’t sell the property without the consent of the others, even if that owner owns more than 50%. And while a co-owner is allowed to sell his or her interest, finding a buyer willing to offer anything more than a heavily discounted price would be very difficult. The other owners may not want to buy the selling owner’s interest, or can’t afford to, yet do not want to sell the land. Selling the property as a whole may be the only way out. The operational, legal, practical and emotional dilemmas that potentially confront tenants-in-common can be difficult and awkward. Thus, no matter how the ownership interest was acquired, it is wise to understand the options available for getting out.

It is common for a group of tenants-in-common to adopt a co-ownership agreement that covers the sale or disposition of any interest or the whole property. Another installment of this series of briefs reviews the benefits of adopting such an agreement that includes specific “buy-sell” provisions. But such agreements are not legally required and all too often are not in place, for a variety of reasons. Without a set of ground rules, however, what does a co-tenant do if he or she wants out?

In the absence of an agreement that controls the process, the only solution is a lawsuit known as a “partition action.” California law provides that an owner of a tenant-in-common interest is entitled to partition the land as a matter of right - no blame or fault needs to be established; just common ownership. This right may be waived or altered in an agreement. “Partition” can mean dividing the property, if feasible, or selling the parcel and dividing the proceeds. In addition, during the process of a partition action, the court has the power to protect the property from waste or interference with the partition process.

Legal actions can be antagonistic, expensive and time consuming. Whatever reasonable steps can be taken to avoid litigation should first be pursued. Even when a partition action is the only realistic remedy for owners of the property - in other words, a business-like solution to a practical problem - it can still generate deep, emotional reactions, especially if the property being partitioned can't be divided and, contrary to the deeply held desires of other owners, must be sold.

Today, many forms of tenancy-in-common investments are available, as well as the more traditional forms described above. In all cases, these may well present opportunities, but there will also be risk and uncertainty. Co-Ownership Agreements are a solution, but the terms should be clear and complete. If there is no agreement, a partition lawsuit may be the last resort for the owner who wants out.

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