

Property ownership

Be prepared before buying property together

There are many issues for prospective property owners to consider before owning property with another party. From the form of ownership of the property, to agreements on use and cost sharing, the parties should make sure they have reached an agreement on all issues and that agreement has been memorialized in writing, as early as possible in the process of buying a property.

“The earlier the parties discuss the issues of joint ownership, the better,” says Catherine Marriott, a member of Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Marriott about helping buyers make informed decisions about joint ownership of property to avoid major trouble down the road.

WHAT ARE THE MAIN TYPES OF JOINT OWNERSHIP OF REAL PROPERTY?

When there is more than one party who will be an owner of a property, the parties can own the property as tenants in common, joint tenants with a right of survivorship or tenants by the entirety. In a tenancy in common, each party owns an undivided interest in the whole of the property, either in equal ‘parts’ or as designated by a percentage in the deed. In the event of the death of a tenant in common, the decedent’s interest passes to the party or parties named in the decedent’s will. When property is owned as joint tenants with a right of survivorship, upon the death of one of the owners, the decedent’s interest passes by operation of law to the surviving owner or owners. Only married couples can own property as tenants by the entirety, which provides that the couple, together, owns an undivided interest in the entire property. Upon one spouse’s death, their interest

passes by operation of law to the surviving spouse.

HOW DO PROPERTY OWNERS DECIDE WHICH IS THE BEST FORM OF OWNERSHIP FOR THEM?

Intent of ownership upon the death of an owner is a major consideration in the form of ownership. Another major consideration is access to a party’s interest in the property by the owners’ creditors. Depending on the form of ownership, creditors may have more or less success in attaching to a party’s interest in the real estate, or forcing the sale of the property, when seeking to collect a judgment. Most married couples own property as tenants by the entirety. There are reasons beyond the scope of this article why a married couple may not want to own property as tenants by the entirety. Similarly, most unrelated parties choose to own property as tenants in common, which is the presumed form of ownership for unmarried individuals if no form of ownership is designated in the deed.

WHAT ELSE SHOULD BE DISCUSSED?

One of the biggest issues that the parties will need to figure out is how the costs of acquisition and ownership will be shared. How much will each party contribute in order to buy the property? If the purchase will be financed, will both parties be



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personally liable? Will the parties set up a bank account and each put money into the account on a regular basis? What if a party doesn’t pay? How will the parties determine if improvements and repairs are needed? What if they don’t agree? The list goes on and on.

The parties also need to determine who can use the property and when, especially in the case of a vacation home. Will the property be rented? Can the parties have guests and how will that work?

Another major consideration involves a party’s desire to sell his or her interest in the property. Most agreements restrict the ability of a party to sell to a third party or require an offer to sell to the other owner or owners, and many agreements include a formula for determining the purchase price. The same consideration should be given to what happens when a co-owner dies. The agreement should address if the surviving owner can or must purchase the interest and on what terms.

There are many issues that parties need to work through before buying property together. Once buyers locate a property, there will be a flurry of activity — the parties will negotiate the terms of an agreement of sale, apply for financing, complete inspections and prepare for closing. Timetables will vary. The more prepared buyers are up front, the smoother things will go as closing approaches. ●