

Vacation Home Co-ownership

Proper Documentation Can Help Avoid Some Headaches

By TODD RATNER

When Michael and his wife, Alice, began looking at weekend homes on Cape Cod, it quickly became apparent they could not undertake the financial burden alone. Fortunately, they had friends in a similar position. Eight years ago, the two couples purchased a four-bedroom cottage on the Cape.

The first few years of co-ownership were uneventful. However, in year five, a series of unanticipated costly repairs surfaced, the families grew, causing cramped quarters, and Michael and Alice started contemplating selling their share and getting a place of their own. The only document between the parties was their four names on a mortgage, and they believed that through general reasonableness things would work out. However, they understood that the handling of these delicate issues may have plagued their friendship.

The fictitious scenario above illustrates some potential problems that may arise in co-ownership. Generally, each of the co-owners owns a percentage of the property, is on the title and deed as an owner, and is a co-borrower on a mortgage.

The advantage of co-ownership is that it allows individuals or couples that cannot afford or justify the expense, to be able to own vacation property. Furthermore, co-ownership allows people to share the risks of unforeseen maintenance problems and value depreciation.

Of course, there are disadvantages as well, which include giving up some of the usage rights and freedoms that you would typically enjoy if you owned the property alone, and also relying on others to fulfill their obligations. Moreover, unlike vacation-

ing at a hotel, the owners are responsible for all the upkeep, from mowing the lawn to finding an electrician.

Several different ownership forms can be used to co-own a vacation home, and the legal consequences of each are quite different. If two or more individuals

ing: a) protecting your other assets from liabilities arising from ownership of the vacation home, b) protecting the vacation home from seizure by your creditors, and c) increasing flexibility for ownership changes.

The best type of entity will depend upon the number of co-

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own the home as joint tenants, the property automatically passes to the survivor(s) on the death of one party. The existence of a will for any of the parties will not change the outcome. Furthermore, in the case of jointly owned property, no owner can sell his or her share of the home without the other parties' consent.

If the parties are married, a tenancy by the entirety can be formed, which is similar to joint tenancy, whereas the surviving spouse automatically inherits the property on the death of the other spouse.

Alternatively, if the home is owned as tenants in common, each party is considered to own his or her share, and the ownership shares can be conveyed without the other parties' consent. Moreover, under a tenants-in-common ownership, each party can leave his or her shares to any beneficiary on death.

On the other hand, owning a vacation home as a limited liability company, limited partnership, corporation, or other entity can offer several advantages includ-

owners, the likelihood of increase or decrease in co-owners over time, how hands-on the owners want to be in the day-to-day operation and maintenance of the property, and whether the co-owners are related, among other things. The drawbacks to owning a vacation home as an entity include formation fees, special taxes and the annual costs of preparing tax returns for the entity.

It is very possible that different owners can co-own property without a formal arrangement between them, without incident. However, wise co-owners may wish to address the contingencies ahead of time. Entering into a written agreement sets forth the ownership rights and provides for an equitable distribution of the property in the event of any number of circumstances.

Co-ownership agreements address relevant issues, both practical and legal, that might otherwise plague such a relationship. Among the issues that should be addressed within the co-ownership agreement are:

- **Ownership** – How the ownership percentage is to be divided among the parties and how the title is to be held;

- **Property Usage** – the co-owners should determine the number of people the vacation home can comfortably accommodate at one time and plan the use of the property accordingly;

- **Maintenance/repairs** – it is important to determine the maintenance that is required for a given year or set of years and plan the resources accordingly;

- **Finances** – There must be adequate resources to not only purchase the property but to operate and maintain it;

- **Sale of the Property** – Co-owners should determine whether the sale of an interest should be restricted. Oftentimes these agreements provide for a “right of first refusal” so that when one party wants out, the other(s) is given the opportunity to buy that interest.

Co-ownership of vacation homes enables families, friends and acquaintances to own something special that may not be affordable to a sole owner. However, it takes careful planning to be successful. It is prudent to hire an attorney to help you negotiate and prepare a co-ownership agreement so that all contingencies are met and everyone goes away happy.❖

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