

Multiple Property Owners- When a Majority Does Not Rule, what is the Remedy?

Legal View

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Recently, I was asked how family members who inherited an equal one fourth share of a property could use and manage the property if a majority of the owners agreed but one did not. Quite commonly, this comes up when properties such as vacation homes are inherited or purchased for investment by several unrelated individuals. It is logical to think a majority owner, or a majority of owners, can render decisions that are controlling on minority owners. The problem is, that a majority doesn't rule in real estate, and decisions either require full agreement or court intervention by way of a partition action to have the property either divided up, or sold and the proceeds divided based on ownership interests. The problem arose in this case because three out of the four owners wanted to sell the property and reinvest their shares where they lived, not where the inherited property was located.

Why Can't We All Just Get Along (or at least, outvote our partners)?

A basic understanding of real estate law is needed to see why majority votes do not work in real estate matters. In the context of property ownership, the word "tenant" does not mean a renter. "Tenant" is actually a historic term for the owner of a piece of real property, regardless of whether or not the "tenant" resides at the property. When property is owned by several persons, the owners, or "co-tenants," will typically hold title as "tenants in common." Each tenant, or owner, has a complete and undivided interest in their individual share. If they own the property as "joint tenants," the result is that if one of the tenants dies, the remaining co-tenants inherit the deceased tenant's share. This is an unlikely scenario when property is purchased for investment or inherited. However, when property is owned as "tenants in common" no single owner, or a majority of owners can take any action unless such action is agreed upon by 100% of all the owners. Simply put, there is no "majority rule" in property ownership.

So, What Can Be Done?

Ideally, all co-owners would get together (either before the purchase or after inheritance) and work out a "tenants in common" agreement. Basically, a "TiC Agreement" is a contract between the co-tenants that sets forth rules and procedures for the co-ownership of the property. It can define how a majority vote will be determined, or appoint a majority owner to manage the property. A TiC Agreement may also include regulations on co-tenants living on, using or working at the property, what the land will be used for and how profits will be divided. Most importantly, it would dictate how an individual owner may withdraw from the co-ownership. Without a TiC Agreement, particularly among family members, it is often predicted "empty chairs will be found at the Thanksgiving dinner table." A TiC Agreement may also be required by a lender as a condition for a loan so that the lender knows there will be a process for decisions to be made relating to the property. If a TiC Agreement cannot be implemented, or was not

initially implemented at the beginning of joint ownership, the only remaining option is to file a lawsuit for partition, a process where the court allows one or more co-owners to buy out the other owners, divide up the land if feasible, and if not, market and sell the property on the open market.

The bottom line is you can't force a management agreement on your co-tenant, even if there is a majority consensus. The only real "hammer" you may have is to go to court or threaten a court action to get yourself bought out of the property, or buyout your co-tenant. Drafting a TiC Agreement at the beginning of ownership can prevent filing a court action or hammering out an agreement under duress. It may also promote harmony in family relationships and profitability of an investment property.

Do you have a legal question? Send your inquiry question to Jeff@klfpc.com. Appointments are available in both Black Hawk and Denver offices.

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