Buying a House with Someone

Many people consider buying a house together, for many different reasons. Whether it is your first-time home or an investment property, buying a house together does have its perks. If done with care, this arrangement can be very beneficial in getting you a house that you may not have otherwise been able to afford. Be sure to figure out the details explained in this article prior to buying a house together, though, in order to avoid financial and legal chaos.

Decide Between Tenants in Common and Joint Tenants with Right of Survivorship

When you take ownership of property, you receive a piece of paper, called a " deed ," that shows you have title. This deed explains how you want to own the property. When you and another person or persons are buying a house together, you can own the property either as tenants in common (TIC) or as joint tenants with the right of survivorship (JTWROS). You still own the home in each scenario, but the implications of each are different.

Tenants in common

Each tenant in common owns his or her own separate and distinct share of the same property. The size of this ownership share may vary, but each person has an undivided, equal right to use and occupy the entire property. When a tenant in common dies, his or her share of the property goes to his or her beneficiaries, rather than to the other tenants in common. This form of holding title is most common with unmarried persons, especially if they each contribute a different amount towards the property.

Joint tenants with right of survivorship

Each tenant has the right of survivorship, meaning that if one owner dies, that owner's interest in the property will pass to the surviving owner or owners. The interest in property of the deceased owner simply evaporates, and cannot be inherited by his or her beneficiaries. Unlike a tenancy in common, where co-owners may have unequal interests in a property or fractional ownership, joint co-owners each have equal shares in the property. This form of holding title is most common between husbands and wives or parents and children, where the joint tenants want title to pass automatically to the surviving tenant.

In both TIC and JTWROS, when one of the tenants wants to sell his or her part, he or she would sell his or her interest in the property. This is because it would not be feasible to divide the house down the middle and each own respective portions. The buyer would get the same rights and interests as the seller had. If you are buying a house together as a rental property, each tenant would be entitled to a portion of the rental income, proportionate to his or her share.

Compose a Written Co-Ownership Agreement

Some people make the mistake of assuming that any issues or disagreements that arise will be worked out when the time comes. This approach can put a lot of strain on you, your time, your money, your relationship, and can even end up with you in court. Instead, try and think of anything that may arise during the course of your co-ownership, and write out what should happen in those instances. After the agreement is satisfactory to all tenants, each of you should sign it. Below are some issues that you absolutely should include in your agreement.

What is each tenant's fractional ownership?

This is probably the most important agreement to be made, since it affects the property once you decide to sell your share, or after you die. This decision is easy if you have a JTWROS. In that case, you simply divide your interest into equal parts. For example, if there are two of you, you would each agree to divide your shares 50/50.

If you have a TIC, you have more options, because you don't have to divide your interests 50/50. Instead you can divide the shares into fractional ownership. Some people decide who owns what based on how much money each tenant contributes. You could also agree that tenant A is going to receive a larger share, because of all of the maintenance she does; or that tenant B deserves a larger share, because he pays all of the property taxes each year. However you want to divide it up is fine, just as long as you all agree.

How will ongoing expenses be paid?

Ongoing expenses, like mortgage payments, property taxes, utilities, maintenance costs, and insurance premiums should all be allocated according to what all of the tenants thinks is fair. Some people decide to split everything completely equally. Other people divide it based on the same percentage as ownership, or based on the percentage of a down payment each person made. Many times, if the home is a vacation home, the tenants divide up the expenses based on how much time each tenant will use the home.

How does a tenant destroy his or her interest?

You have every right to destroy your interest in the property by conveying your interest to someone else. You do not need any of the other tenant's permission to do this, as it is your property right to keep or sell your interest as you wish.

The affects of destroying your interest vary depending on whether you are in a TIC or a JTWROS. Without a co-ownership agreement, in a TIC, the tenant wishing to destroy his or her interest may obtain a partition of the property. A partition of the property divides any land into distinctly owned lots. Sometimes, especially with a house, this is not possible. In that case, a forced sale of the property could be conducted, with the proceeds being divided according to shares. Each co-owner is entitled to the right of a court-ordered partition. The good thing about determining who owns what percentage ahead of time in a co-ownership agreement is that you can avoid the court's interference in partitioning. In your agreement you can also waive the right of partition.

When a JTWROS tenant terminates his or her interest, the remaining co-owners keep their JTWROS between them and remain joint owners of the remaining interest. If the terminating tenant conveys his or her property to a third party, however, that third party owns his or her share on a TIC basis with the other tenants. The original tenants still preserve their joint tenancy interest between each other, while the new tenant is a tenant in common with the other two.

This result arises because the timing is different. The original tenants all received their interest in the home at the same time, whereas the new tenant received his or her interest at a later time. If all the tenants wish to maintain a joint tenancy, then all of the original tenants must transfer the joint interest of the remaining joint tenants and the new joint tenant together, in one instrument. Absent an agreement that specifies otherwise, this is what happens when a tenant breaks or destroys his or her interest.

One way around the default approach is to actually specify in the co-ownership agreement that a selling co-owner must preserve an opportunity for the remaining tenants to purchase the interest before any third party. Adding this provision makes sense; however, you must also think about how you will fairly assess the property value at that time, whether the remaining co-owner must accept the sale offer, and what will happen if the remaining co-owner does not have sufficient funds to accept the sale offer.

Buying a house together has its perks, as long as all the parties involved are thoughtful and careful in deciding what will work best for each of them. Often times, it is a good idea for each of them to consult an attorney who will look out for their individual property interest.

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