



ADLV LAW

FIERCELY ON YOUR SIDE

SOLUTION BRIEF

Property Co-Ownership Agreements

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Buying property can be a very rewarding experience. Buying property with a friend, partner or relative can often enhance the experience.

However, before you buy property, you need to think about the "exit". You need to think about what will happen if things go wrong. Property is a long-term and high value investment. The chances of things going wrong may not be too great, but when they do - it is expensive.

In our experience, the following issues need to be considered before you buy property with another person:

01

In what proportions will the property be owned?

If the investment is equal, the split will also likely be equal. But if one owner contributes more to the purchase price, or commits to paying more of the mortgage, or undertakes to perform work on the property, then the percentage ownerships may vary.

02

In what proportions will people contribute to the initial cost of the property?

If a person contributes something other than money - how will it be valued? For example, if someone agrees to make improvements to the property, will they be paid cash, or will the work "pay for" an interest in the property? What happens if they do not perform as agreed, to the required standard, or at all?

03

How will title to the property be held?

The title may be held directly by the owners, either as equal "joint tenants", or more likely as "tenants in common" if the owners are not married. If there are many owners, then a third-party "nominee company" may be more practical. What happens on the death of a co-owner should also be addressed, since the estate is likely to sell the property.

04

How will the property be used?

If the property is a house that is to be shared by the co-owners, then presumably both owners will be entitled to full access. Vacation ownership is necessarily more complicated and can be accomplished through schedules which address periods of usage. If the property is to be rented to third parties, then consideration needs to be given to who will manage this process.

05

What happens if one owner is not being able to meet their share of contributions and expenses?

For example, the cost of maintenance, repairs or improvements. Often another owner is required to bridge the gap, and then there is an argument about what they receive in return. Do they get compensated with a rate of interest, or are they entitled to acquire a further interest in the property?

06

Are the owners' responsibilities clearly defined?

Otherwise, things don't get done. For example, who will be responsible for taking out insurance on the property, who will hold and collate tax information, who will maintain the property - and if a property manager is appointed, how will they be selected?

07

What debt, if any, will be able to be secured against the property?

What additional security will be provided, e.g., personal guarantees or other property? In what circumstances will that additional security be released? What recourse will one owner have against another if only one owner's security is called up?

08

Value of a part interest

A "part interest" in a property is not necessarily worth the same as the total value of the property divided by the ownership interests.

This is because few people want to acquire an interest in property with people they do not know well. You therefore need to agree on what circumstances an owner is able to force a sale of the whole of the property. If you don't have a contractual right to sell your interest in the property, or force a sale of the whole property, then the only other avenue available to you is to apply to the Supreme Court. An expensive exercise. Normally these agreements also provide for a "right of first

refusal" so that when one owner wants out, the other is given the opportunity to buy that interest. The sale price can either be a function of the market (the appraised value), or an agreed fixed price.

09

What if one owner gets divorced, or is made bankrupt?

Will the other owners be forced to sell at a potentially discounted price in the wrong market?

10

How will decisions be made about what to do with the property?

Will it be by majority, or will all owners need to agree? What if there is a "deadlock" between the owners?

11

In summary

All these issues can lead to unnecessary arguments, disputes and costs - and ultimately, broken relationships. They can also be easily sorted out before the property is purchased by the owners' negotiating and then entering into a "Co-Ownership" or "Landholding" Agreement.

Unfortunately, we see a lot of property deals go south. Not because of anything wrong with the property itself, or even the property market in general. But because people haven't agreed in advance about what they will do when one of a number of foreseeable events occur.



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TALK TO US

What next?

We are property investors ourselves. We have experience in documenting and managing co-ownership, and we can individually customise a Co-Ownership or Landholding Agreement to suit your individual needs.

If you would like to speak to someone about the use of an agreement in relation to your property investment, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.

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