

## Co-ownership of property can be practical, problematic

Co-ownership of real property is common for a variety of reasons. With the rising price of Hawaii real estate, co-ownership decisions are often made to make the purchase more affordable. Frequently, family members inherit an undivided interest in real property, thus becoming co-owners with family members.

Whether becoming a co-owner of real property by choice or circumstance, disputes among co-owners can arise for a variety of reasons. It is important to be aware of the risks of co-ownership and ways to avoid disputes. When disputes have already arisen, it is important to understand your legal options, rights and responsibilities.

Co-owners who either purchase or inherit real property may not have the benefit of a plan or agreement on how to use, occupy and manage the real property, which can lead to disputes.

Here are some preliminary questions to consider when deciding whether co-ownership should be created, maintained or severed. For example, what will happen to each owner's investment in the real property if the relationship between co-owners fails? What happens if the co-owners have a falling out and one co-owner made a larger down payment or pays more property expenses than the other owner(s)? If one co-owner wants to sell, will other co-owner(s) have the first right of refusal to buy the interest? Will there be an agreement on use? What happens when co-owners cannot agree on ownership issues?

Asking and answering these questions helps inform decisions and identify whether a co-ownership agreement makes sense.

Co-ownership agreements provide co-owners with an opportunity to consider and delegate rights and responsibilities, and could help prevent or minimize disputes.

For inherited property, family co-owners might have difficulty making decisions following the loss of a family member, including whether it makes sense to keep the property or to sell it. For co-owners who decide to sell immediately, the division of proceeds may be fairly straightforward. For some families, decades might pass before decisions are made on what to do with the real property.

Further, over time the number of co-owners can increase, and what is initially a few co-owners might grow exponentially as fractional interests in the property are

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passed on and inherited by heirs. It may become difficult to make decisions or even determine all of the co-owners without court action. Additionally, a sale or transfer often becomes difficult when there are large numbers of co-owners.

In some instances, severing co-ownership by selling is often an appropriate or preferred way to end or prevent co-ownership disputes.

There are various ways to resolve disputes, including resorting to legal action. Hawaii law provides certain statutory rights to co-owners. Unless there is a co-ownership agreement on how disputes are to be handled, when two or more persons hold or are in possession of real property as joint tenants or as tenants in common, any one or more of such persons may bring an action in the circuit court of the circuit in which the property is situated, for a partition of the property, and for a sale of the same or a part thereof if it appears that a partition (otherwise) cannot be made without great prejudice to the owners.

When one or more co-owners acquire real property from a relative, the partition of the property by court action may also be subject to requirements found under the Uniform Partition of Heirs Property Act.

Ultimately, with the increased value in real property, real estate disputes among co-owners are likely to increase. Real estate litigation can frequently be avoided with careful planning and carefully drafted agreements; however, when necessary, real property ownership rights are important to protect by legal action. A real property attorney can be consulted as necessary for co-ownership planning, decisions, dispute prevention and resolution of disputes.

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