

Joint ownership of property

Buying property with a lover, partner or mate can deepen bonds and affirm commitments; however, goodwill and good feelings do not always last forever. Promises of today may have to be enforced tomorrow.

BY BRADLEY J. WOODWORTH, Esq.

Please note that no two situations are alike. This column discusses general legal principles only. For specific advice to rely on you must consult a qualified attorney.

Ofentimes, the most concrete expression of a gay/lesbian couple's commitment to each other is buying a house together. Or at least planning

Counsel

to do so when you've found the right partner, or get that promotion, or the probate finally ends on Aunt Minnie's estate. Joint ownership of property can have some real advantages, but as Ms. Ireland and Ms. Flanagan found out (probably at great expense) it can also create serious problems when the intentions of the parties are not clearly reflected in the way they structure their joint ownership.

Ireland and Flanagan were two unmarried women whose joint property ownership was finally resolved by the Court of Appeals in 1981. These two had "bought a house together" several years earlier when, as Ireland testified, they planned "... to have a long relationship together and a marriage [and to] pool our resources." To get the down payment together, Flanagan borrowed \$5,000 from her credit union and Ireland sold her car for \$2,000. Significantly, the property was placed in *Flanagan's name only*. Apparently, either they did it this way to shelter Flanagan's much higher income, or because the escrow agent made up the papers in error, but they signed them anyway and never got around to putting the property in both names.

Whatever the reason, the property was technically in the name of Flanagan only when the relationship ended and the fight over the property began. Ireland sued for her half interest in the property, and for half its rental value for the time Flanagan lived in it after Ireland left. The trial court denied any relief, but the court of appeals found that it was the intention of the parties to be "Equal cotenants" in the property. Therefore, Ireland was declared to be a one-half owner (But Flanagan was entitled to a credit of \$1,500 because of her larger share of the down payment). As a result, Ireland had to pay one-half the house payments (she had stopped paying when she moved out), but was entitled to offset one-half the reasonable rental value of the property (because Flanagan continued to live there, in effect excluding Ireland from the property).

The point of this story is that no one should ever have to go all the way to the Court of Appeals to find out whether or not they owned a part of the property they thought they did. Unfortunately, this couple chose to rely on the goodwill and good feelings they had for each other at the time, and allowed one of their most important legal matters to be set up infor-

mally. If you are considering joint property ownership, DO NOT MAKE THIS MISTAKE.

The various rules regarding ownership of real property are very technical (and very boring). I won't even try to explain all the various possibilities, but important issues that your lawyer will help you work out include questions of survivorship (Does your share go to her when you die? or to your heirs?), whether the property should be held as tenants in common or tenants by the entirety, or held by way of partnership. What agreements regarding the right to possession should be made? Can just one of the owners bind the property (Such as ordering a new deck to be built, which can cause a lien against the entire property)?

As should be apparent, real property ownership is one of the most important decisions you will make (and probably your biggest single investment). My advice is to do it carefully and to do it right. Consult a qualified attorney early and often as you put your deal together. Do not let a real estate salesperson talk you out of having an attorney. They will sometimes tell you that lawyers just slow up a deal, and "nitpick" all kinds of details. This is true, but SO WHAT. You are not making this deal to please the real estate agent, whose interest really is only to close this deal and get on to the next one. A real estate lawyer's job is sometimes to slow you down, too. When the passion to close the deal and paint the white picket fence is obscuring your judgement, your lawyer can help keep your feet on the ground and your money in your pocket until the deal is really ready and right for you.

Buying property with your lover, partner or mate can be an opportunity to deepen your bonds together and affirm your commitments to each other. Plan for it in your life, but when you are ready, remember that the promises of today may have to be enforced tomorrow, so protect your intentions with sound legal advice.

Next month: Wills and Living Wills.

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