

Buying Property Together: A Primer on Co-Ownership in Colorado

By Andrea K. Vella

Raise your hand if you own a home. Keep it raised if you own that home together with another person. Now, continue holding that hand up if that other person is not your husband or wife. I'm willing to bet that if I scanned the crowd, quite a few hands would still be in the air. Perhaps not surprisingly, it is becoming more and more common for unmarried people to purchase real estate together. Part of the reason is because real estate prices in the Denver-metro area have increased significantly, with the average price of a single-family home in metro Denver selling for \$502,986 in February of 2018, which 11.8% greater than it was in February of 2017, according to Steve Danyliw, chairman of the Denver Metro Association of Realtors market trends committee. Such high prices create an environment where it is financially challenging for one person to purchase a home on his or her own. But another reason for the increase in unmarried people purchasing real estate together is quite simply because it has become easier to qualify for a loan together. Gone are the days when two people wanting to purchase a home together would only qualify for a loan if they were married. Couples are buying houses together before marriage (or without ever getting married). Friends are buying investment properties together. Groups are joining forces to purchase vacation properties. As you journey into this world of co-ownership without the prerequisite of marriage, it is important to keep in mind the differences between the types of co-ownership so that you choose the form that best fits your situation. What follows is a brief overview of two types of co-ownership in Colorado: Tenancy in Common and Joint Tenancy.

First, it is presumed that when two or more people take title to real property in Colorado, they take title as Tenants in Common. This type of ownership is different from Joint Tenancy, which must be expressly stated in the deed conveying the property from the grantor(s) to the grantees. This means that in order to take title as Joint Tenants instead of Tenants in Common, clear and conspicuous language in the deed transferring title must specify that the grantees are taking title as Joint Tenants. In the absence of such language or clear designation that the grantees are taking title as Joint Tenants, then Colorado law assumes that the property is being conveyed to the grantees as Tenants in Common.

What does each type of ownership mean for you? Let's start with Tenancy in Common. With this form of ownership, each co-owner has an undivided and freely alienable interest in the property. This means that each co-owner can transfer his or her respective share of ownership by sale, gift, will, or inheritance without the consent of the other co-owner(s). Each co-owner's interest must collectively add up to 100%; however, the ownership split does not need to be equal. If one of the co-owners passes away, his or her interest in the property will pass to his or her heirs based on that person's will or by operation of intestate succession. Another feature of Tenancy in Common is that an entity (corporation, partnership, LLC, etc.) can co-own the property. If the entity

terminates or otherwise ceases to legally exist, then the entity's interest must be transferred and executed by an authorized representative of that entity.

Joint Tenancy is another option but remember that the instrument conveying the property must expressly state that the property is being conveyed to the grantees in Joint Tenancy, or other language to that effect. Similar to Tenancy in Common, the number of Joint Tenants is not limited to two people, and each co-owner can hold unequal percentage interests in the property, so long as the collective ownership adds up to 100%. Furthermore, much like a Tenancy in Common, a co-owner in a Joint Tenancy can mortgage, sell, or otherwise transfer his or her interest without the consent of the other Joint Tenants. However, it is important to note that if the Joint Tenancy was owned between two people, then such transfer could have the effect of terminating the Joint Tenancy and the new owner and remaining owner will hold the property as Tenants in Common. Additionally, there may be tax ramifications to any such transfer of interest, so it is important to check with your accountant to understand how ownership in a Joint Tenancy will affect you.

One of the differences between Joint Tenancy and Tenancy in Common is that only natural persons can create a Joint Tenancy, not business entities. Another key difference is that upon the death of one of the co-owners in a Joint Tenancy, the remaining Joint Tenant(s) will continue to own the entire property, including the interest of the co-owner who passed away. There is no need to file a probate action with the court because title transfers automatically by operation of law (though the surviving Joint Tenant(s) will need to record the death certificate and a supplementary affidavit in the Clerk and Records Office in the county where the property is located). Also, keep in mind that because title transfers by operation of law and outside of the probate process, a Joint Tenancy is not controlled by terms of a will. You should consult with your estate planning attorney to better understand what this means for you.

Of course, this is only a primer and you should consult with an experienced attorney with any questions. We here at FGMC are happy to guide you through the intricacies and help you choose the type of ownership that best fits your particular situation. Please feel free to contact any one of our knowledgeable real estate attorneys for more information.