

Wiegel & Fried, LLP

Attorneys Serving the
California Real Estate Industry

414 Gough Street
San Francisco, CA, 94102
(415) 552 8230

469 Ninth St, Suite 200
Oakland, CA, 94607
(510) 625 0100

www.wiegelfried.com

Tenancy-In-Common Agreements

By Dennis C. Hyde

Many people have heard of forming a tenancy-in-common group to buy a building, or of purchasing a “tenancy-in-common” which directly corresponds to a particular unit in a multi-unit building. This is a feature of the San Francisco and Oakland real estate markets that requires some explanation.

“Tenancy-in-common” is one way that several owners can hold interests in a single parcel of real property. It developed in England centuries ago. Nothing besides a deed to two or more persons is required to create a tenancy-in-common. Each person holding an interest in the real property is called a cotenant.

The law says that each cotenant owns an undivided interest, in some percentage less than 100%, in the whole of the real property. This legalistic formulation can best be explained by considering some of its practical results. No cotenant has a right to exclude another cotenant from any portion of the real property. If a portion of the real property is rented, all cotenants are entitled to a share of the income equal to their percentage interest. One cotenant’s desire to make and be compensated for improvements is complicated by the other cotenant’s interests. A bank will not ordinarily make a loan to a single cotenant that is secured by that cotenant’s interest alone.

Due to the high cost of homes in the Bay Area, many buyers find it difficult to afford a single family home. Creative attorneys and real estate professionals have responded to this problem by helping several buyers get together to purchase a multi-unit building with the intention that each of them will “own” a particular unit. In this way home ownership can be made possible for people who could otherwise not afford it.

In local parlance, a tenancy-in-common agreement, or TIC agreement, refers to a particular type of written agreement among such a group of buyers. The typical TIC agreement alters the ordinary rules of tenancies-in-common in several ways. The cotenants agree that they each have exclusive rights to particular units. As to their particular units, they are generally free to make the improvements they desire so long as the construction is proper. Generally, the improving cotenant can realize the value of their improvements for him or herself.

Beyond that, the typical agreement addresses the use of common areas of the building, dispute resolution, and what is to be done if one of the cotenants does not uphold their end of the

agreement. It often adjusts the cotenants' percentages of debt service obligations, maintenance costs, and record ownership interests independently for a variety of reasons.

There are pros and cons to entering into such an agreement. Generally, the advantage is the reduced cost of home ownership and risk-spreading that results from working with a group. First-time buyers and single persons can benefit from the input of their other cotenants when general ownership issues arise because the cotenants' interests in these matters are basically the same. If the group is cohesive, responsible and reasonable the venture can be advantageous for all.

There are risks, however. Most significantly, the loan on the property will ordinarily be in everyone's name, and the entire property will secure the payments due on the loan. If one of the cotenants fails to make a payment, the entire property, not just that cotenant's interest, is subject to foreclosure by the lender.

Sometimes the character of the group changes over time as a result of personal conflicts or changed circumstances, and the formerly harmonious relationships become troublesome or worse. This office has represented cotenants involved in disputes with other cotenants over various issues. We find we can usually resolve the conflict to our client's advantage simply by refocusing the group on their more important shared interests. Careful work at the time the TIC agreement is prepared ordinarily avoids such problems.

Please do not rely on this article alone in deciding whether to participate in such a venture. A particular person's individual circumstances must be considered by a knowledgeable professional in order for that person to make an informed decision. While this is most often accomplished by a single attorney who advises the entire group, it is not uncommon for individuals to seek out the advice of a separate attorney who only represents them.

Dennis C. Hyde is an associate at Wiegel & Fried, LLP. The information contained in this article is not intended to be exhaustive - instead it is provided to inform the real estate community of some important features of California law. The information in this article is general in nature; consult with an attorney for legal advice on any particular matter. © Copyright 2004, Wiegel & Fried, LLP.