

UNDERSTANDING THE REAL PROPERTY LANDSCAPE

Whether in the market for buying or selling property or in the unfortunate circumstance of being embroiled in a real estate dispute, it is more important than ever in today's economic climate to fully understand the legal ramifications surrounding real estate transactions.

MANNER OF HOLDING TITLE

When taking title to property with one or more persons, consider what form of ownership serves the interests of all parties involved. California Civil Code section 682 sets forth the different types of joint interest in real property, which can be: (1) of joint interests, (2) of partnership interests, (3) of interests in common, or (4) of community interest of husband and wife. Be mindful that what works now may not necessarily work in the future.

PITFALLS TO AVOID

For example, a common mistake for people taking title in joint form is to take ownership in joint tenancy. A distinguishing

characteristic of joint tenancy is the right of survivorship—meaning, when one joint tenant dies, the surviving joint tenant takes title to the whole estate. This can be a surprising pothole for those anticipating an inheritance from the deceased joint tenant. On the other hand, a joint tenancy can easily be terminated by a conveyance of interest from one joint tenant to himself or a third party. This can be done even without the consent of the other joint tenant. A severance of joint tenancy results in a tenancy in common, and unlike joint tenancy, this form of co-ownership does not carry a right of survivorship.

Regardless of the particular form of co-ownership, it is important to understand rights, duties, and obligations as a co-tenant. These include the right to possess the entire property, the right to bring or defend an action against a third party for protection of rights in the property and the right to sue the co-tenant for an accounting where rent is received from leasing the property to a third party. Over time, disputes may arise in handling the property. If at the end

of this rocky road, termination of the relationship seems the best option, be mindful of the best method to do so.

COURT INTERVENTION CAN BE AVOIDED

If all parties consent to divide respective interests, the court need not be involved. If consent is not readily achievable, however, a co-owner can bring an action for partition before the court to divide each owner's respective interest in the property. The court may then order either a partition in-kind or a partition by sale. A partition in-kind involves a physical division of the property, while a partition by sale involves a forced sale of the property, with the proceeds allocated through appropriate accounting measures. The best way to avoid court is to consider these issues ahead of time and create a written agreement that will address all of these issues upon the end of the relationship. Whatever the needs, a competent real estate attorney can be a guiding light throughout the entire process.