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Be cautious when buying property with a partner

What happens when you buy a property with a partner?

How do you protect yourself if something goes wrong?

These questions were raised in an e-mail received last week from Star readers Colleen Hart and Kim Aspin.

Hart writes, "A friend and I are both recently separated/divorced and we would like to purchase a house jointly.

Ideally we would like two separate units that we'd live in and a basement unit to rent out as income to help offset our mortgage payments.

She poses this query: "Our question is what type of legal contract would we need? We'd like to treat this as a business agreement/contract."

In this case, I strongly recommend a joint venture agreement setting out in some detail the relationship between the parties, their mutual responsibilities, and what happens if something - or everything - goes wrong.

Unfortunately, there is no such thing as a standard form of a joint venture agreement.

Every one must be individualized for the circumstances and for the parties.

Here are some general topic headings and items to be considered for each. (I have not considered the basement apartment issue here. That will have to be the subject of a whole column itself.)

* Definitions: Start off by identifying the property and naming the parties to the agreement and defining the proportionate interests of each. (Is it half and half, or some other percentage?) Make it clear whether one party can sell out or mortgage her interest to a stranger without the consent of the other party.

* Bank account: Open a bank account for the exclusive use of the venture, and decide in writing who will have signing authority.

Can either party sign small cheques, or will only one party manage the property? Will two signatures be required for cheques larger than, say, $200?

Make it clear who is responsible for bookkeeping and balancing the books, or face the possibility that no one will do them. To simplify life, use pre-authorized payments for mortgage, taxes, electricity, gas and insurance.

* Form a team: You will need the ongoing services of professionals - a real estate agent familiar with rental property, an experienced real estate lawyer, and a chartered accountant to handle the taxes and financial statements. Write their names into the agreement and require mutual agreement to retain them.

* Management: Who will manage the property? Decide whether both parties have to consent to do repairs, agree on a tenant for the third unit, or any other day-to-day issue. If apartment one needs repairs, is the cost shared equally or does the occupant of that unit bear the entire cost?

* Disclaimer: Make it clear that this agreement applies to one property only and is not a partnership or joint venture for any other purpose.

* Rents: Decide in advance what the initial rents or monthly contributions will be from each party and that if they go up or down in future, they will move in the same proportions. The venture may have two equal participants, but if one has a two-bedroom unit and one has a one-bedroom, the monthly contributions (rent) should probably be unequal.

* Utilities: If utilities are bulk-metered for the building, it is important to set out the proportionate responsibilities at the outset. What happens, for example, if the participant in the two-bedroom unit takes in a couple to share the rent, or simply has a partner or spouse move in, and the utility usage skyrockets as a result? Are the utility costs divided equally, by square footage orby the number of occupants?

* When things go wrong: This is the probably the most important part of the contract. The joint venture may run into the red for many reasons - including a vacant basement unit, major repairs, renovations, or a jump in the costs for the mortgage, taxes, insurance or utilities.

What happens if one of the partners simply cannot come up with her share of the shortage?

Will there be a reserve or contingency fund? How will the co-owners solve the financial problem, and will the innocent party have to suffer mortgage default proceedings if she cannot cover the arrears of the defaulting party?

(Hint: there are no magic answers for this section. Each situation will have, or possibly not have, its own solution.)

* Termination: Unwinding the venture may be far more complicated than creating it. The time may come when one party wants to move on, or simply cannot get along with the other party, or needs to take a profit or cut her losses.

Can either party trigger the sale of the property on the open market?

Can one party force the other party to buy or sell her half-interest?

What happens if the desire is present but the money isn't?

* Unforeseen events: It's always hard to plan for death, serious but short-term illness, long-term disability or even a job transfer out of the city. Consider the possibility of life and disability insurance to protect against the unforeseen. If a well thought-out agreement is in place, the venture could run smoothly for years. If no written agreement exists, it is a recipe for trouble.
