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Co-owning a house? Get a written agreement

Court cases highlight the importance of working out all the little details first

Several years ago I represented for five charming ladies from the Philippines who lived and worked in Toronto as care-givers. They decided that they could save money if they bought a small house together and shared the expenses. Each of the five had her own room, including two who occupied bedrooms carved out of the basement.

After the home was purchased, everything was running smoothly until two of the owners decided to subsidize their own rent by taking in a roomer to share their rooms.

Soon, seven people were living in the house but the expenses for heat, hydro, water, gas, phone and cable television were only being split five ways. This also applied to the mortgage, taxes, repairs and insurance, which were divided into five equal portions and not seven.

The three partners who did not have roomers demanded that the expenses be split seven ways, and the two who had roomers insisted on keeping the status quo, saying they had given up their privacy and should not have to contribute a larger percentage.

Two-sevenths instead of one-fifth, they argued, wasn't fair in the circumstances.

Acting as a neutral mediator, I suggested they had two options - they could sell the house or sue each other in small claims court for an accounting. (There was no written partnership agreement, which might have settled the problem.)

Since nobody wanted to sell the house, they all headed off to two separate lawyers who eventually took the case to trial. The judge ordered a small adjustment of the operating expenses, but the legal and court fees wound up costing far more than the winners recovered by judgment.

And living in close quarters in the house during months of protracted litigation could not have been a pleasant experience for anybody involved.

Fortunately for the owners, none wanted to dispose of the house, although any one of them could have asked a court to force a sale. In Ontario, under the Partition Act, any person who has a shared interest in land can apply to a court for an order forcing the other owners to sell or divide (partition) the land or the proceeds of the sale.

A classic example of the workings of this legislation came to trial earlier this year. Three brothers - Kent, Randall and Jeffrey Peters - had each been given a one-third interest in the family cottage by their parents in 1986.

The cottage was in the beautiful Lake of the Woods area near Kenora, and was valued two years ago at $180,000. No doubt, the parents anticipated that their three sons and their families would continue to enjoy the cottage for many years to come.

Unfortunately, that was not to be. Within a year of their mother's death, difficulties arose among the three over scheduling when each could use the cottage, the payment of bills, and the need for maintenance, upkeep and capital improvements.

The brothers disagreed on virtually everything. Communications broke down completely, and Randy and Jeff had no alternative but to bring an application for the forced sale of the property and division of the proceeds.

When the case came to trial in April, Kent objected to the partition application by his brothers on the basis that the issues could be resolved with a rotation schedule for use, and an agreement to have a third party manage the repairs and division of expenses.

At trial, much argument was devoted to whether the court could or should refuse the application by Randy and Jeff to sell the property. Ultimately, the court decided to grant the application because the issues between the parties could not be solved otherwise and the applicants (Randy and Jeff) were not acting maliciously or in bad faith.

Justice Terrence Platana found that Randy and Jeff did not have any frivolous or oppressive motives, and ruled that the property be sold.

The same thing happened to three Toronto sisters last June.

Through their holding companies, each of them had a one-third interest in a block of 12 properties on Yonge St., and seven adjacent parcels on Hillsdale Ave. and Manor Rd. The sisters received their interests in the properties by gift from their father in 1956.

One sister applied to force a sale of the properties so that she could disengage herself from her sisters with respect to the properties. There was no evidence of disagreements or disputes.

The two sisters who did not want to sell offered to buy their sibling out at 5 per cent above appraised value. They argued that their sister's conduct was malicious, vexatious and oppressive. Nor would there be any hardship, despite the huge tax bite the sale would trigger.

The court ordered the properties sold. Justice Ian Nordheimer said that any value placed on the properties by an appraiser might not be fair market value because a bidding war could always develop if they were placed on the open market as one block. He said the two sisters who wanted to keep the properties were always free to bid for them when they went on the open market.

The lesson to be learned from the Filipino caregivers, the Peters brothers and the wealthy Toronto sisters is, if you're going to be partners in a property - whether you buy it or receive it as a gift - make sure the shared ownership arrangement is set out in writing - down to the last tiny detail.

If it isn't, and insoluble problems arise, make sure you have the time and money for a long court battle.

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