

THE IMPACT OF JOINT OWNERSHIP OF PROPERTY

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Owning a home has many benefits. But co-owning a home with another person can create problems. If you and your joint owner can't agree on whether to sell, who gets to live in the home, who is responsible for maintenance, what happens if one owner damages the property, or any number of other questions, what are your legal rights? A few of the potential issues are discussed below. These do not address issues between spouses who own the property jointly since there are special rules in those cases which will be applied by family law (divorce) courts.

1. Forcing a sale.

A joint owner of property who wishes to sell it has a virtually unfettered right to compel a sale of the property. To obtain a court order for sale of the property, the joint owner files a lawsuit for "partition." Typically a court will ultimately order the property sold and either order an auction sale of the property or appoint an independent receiver to handle the details (e.g. hiring a real estate broker, negotiating a price, preparing the property for sale). When an acceptable offer is made for the property, the court must approve the sale price and the costs of the sale. Upon close of escrow, the proceeds of the sale are used first to pay off all loans against the property, the real estate commissions, and any other liens against the property. The court may order reimbursement out of the proceeds of the sale of the attorney's fees and costs incurred in prosecuting the partition action. The net proceeds are then distributed to the joint owners. The co-owners often litigate their respective claims to these proceeds based upon such issues as who advanced the carrying costs of the property over time. If one owner wants to buy out the others, so long as all joint owners agree, the court will usually allow this, often based on the appraised value of the property.

2. Occupancy of the home.

Every co-owner of a property has an equal right to live in the property. If only one owner occupies the property, he or she is not obligated to pay rent to the other owners, unless he or she has prevented the other owners from occupying the home.

3. Responsibility for maintenance costs.

Each co-owner is responsible to pay a pro-rata share of property expenses (mortgage, taxes, insurance, maintenance). If one joint owner pays more than his or her share, that owner may seek reimbursement out of the proceeds when the property is sold. He or she generally will not be able to sue the other owners and recover a judgment in the interim. Likewise, an owner who improves the property may be entitled to proportionate reimbursement, but not until the property is sold.

4. Damage to the property.

When a joint owner damages the property, causing it to decrease in value (what the law refers to as “waste”), the other owners may recover the resulting damages, and up to three times the damage if they can establish that the waste was intentional. However, ordinary use of the property, even if it results in value depreciation, does not constitute waste.

Lawrence Dreyfuss and Bruce Dannemeyer are associated with The Dreyfuss Firm, a professional law corporation located in Irvine, California. Collectively they have well over 50 years civil litigation experience. They handle cases throughout California in state and federal trial and appeals courts concerning real property transactions and non-disclosures, secured lending and foreclosures, title problems, partition of jointly owned property, broker liability, contract disputes, and numerous other business and real estate issues. The Dreyfuss Firm attorneys have received the highest possible ratings (AV) for legal expertise and ethics from Martindale Hubbell, the preeminent national resource for attorney evaluations.

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