

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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FRACTIONAL OWNERSHIP OF REAL ESTATE

When purchasing a large asset, such as real estate, a party may want to make this purchase with other persons in order to mitigate the costs of paying for and maintaining the real estate, thereby creating a fractional ownership of the real estate. This has become more common in the purchase of vacation homes where parties do not want to pay one hundred percent of the costs associated with homes that they can only visit for short portions of any given year.

It is also common when multiple people want to come together to purchase investment property. However, just as in any purchase of an asset, fractional ownership does not come without some risks. When owning property with other individuals or entities, it is important to set up the ownership so that the parties know their share of ownership, their



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duties and responsibilities toward the property, what should happen in the event the fractional ownership breaks apart and, in the case of vacation homes, the times that they are able to use the vacation home each year and whether that time can be rented out to other parties.

A common way to purchase real estate when there is a fractional ownership is through an entity such as a limited liability company. An Operating Agreement would be entered into upon the formation of the company which creates a contract between the owners and provides for items such as the capital contributions of the parties (for example, the down payment made by each party for the purchase of the real estate), the allocation of shares of each party (i.e., the percentage of ownership each party has in the real estate), the division of roles as it relates to management and decision making, maintenance, payments,

times to use the property, as well as what happens to the real estate, should the parties decide to terminate their relationship.

Another common way in which persons maintain fractional ownership of property is by Tenancy in Common. This is where more than one person is named on the deed to the property. However, complications arise when one party wants to sell the property, one party is no longer pulling their weight as it relates to their roles associated with the ownership of the property, or one party can no longer afford ownership of the property. In these cases, if the parties cannot agree as to what should happen with the property a Partition action would need to be filed with the Court to divide the property, or if the property cannot be divided, then for the property to be sold at auction. It would be advisable that if you are not intending on creating an entity such as a limited liability company which provides for the day-to-day operations of the property and the resolution of the "break-

"Real estate transactions can get complicated. Contact a Columbus Bar attorney to help make sure your interests are protected: directory. cbalaw.org"

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FRACTIONAL OWNERSHIPS

can include anywhere from **5-12 owners**, while timeshares usually include 52 owners



Source: Luxury Fractional Guide, 2018

up" of the fractional owners, that you do enter into an agreement or contract with the fractional owners to determine these same issues ahead of time.

Any parties that are considering purchasing property through a fractional ownership should contact an attorney and an accountant to determine the best course of action for them. ■

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THE TEN COMMANDMENTS OF MEDIATION

In recent years, many businesses have turned to mediation in an effort to avoid the costs and hassles associated with protracted litigation. As more businesses and their lawyers are dealing with mediation on a regular basis, following these "TEN COMMANDMENTS" may help when dealing with a problem of biblical proportions.

Thou shall not wait too long to mediate. Many advantages of a negotiated resolution dissipate with time. The sooner you resolve, the sooner the parties can get back to business.



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Thou shall expect to avoid legal fees and uncertainty if a settlement is reached. All serious disputes involve a lot of legal fees, time and worry, all of which can be terminated when the dispute is resolved.

Thou shall not forget your people skills. A mediation is no time for "table pounding" and offending the other side. You need their respect, and likeability never hurts.

Thou shall keep an open mind. Listen to the other side's concerns and the mediator's assessment and leave preconceived notions behind.

Thou shall not negotiate with the mediator. If you are not "shooting straight" with the mediator, you are only hurting the mediator's chances of securing a resolution – which is why you are there.

Thou shall be a problem solver. Anyone can take a position and argue why it is right. Real value is provided when one brings experience and judgment together to solve a problem.

Thou shall not expect to win. If either – or both sides – expect to win through capitulation of the other side, there will be no reason to settle.

Thou shall strive to be creative. Some of the best settlements involve some creativity. Thinking about what the other side needs that is not too tough for your side to swallow is a good place to start.

Thou shall not bring a firm bottom line to the mediation. You need to have flexibility and reflect the dynamics that occur in the mediation. Having the real decision makers present is the only way to go.

Thou shall expect a fair settlement "when both sides are equally displeased." A settlement of a tough case typically only occurs when all involved have stretched their comfort zone as far as they can stand.

Telecom 101

WHEN: SEPTEMBER 18, 2019 (3-5pm)
WHERE: COLUMBUS BAR ASSOCIATION
CLE HOURS: 2.0

HISTORY, TECHNOLOGY, LAW & PUBLIC POLICY

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