



KDV San Francisco Real Estate Law FAQs (frequently asked questions)

Q&As for Tenancy-in-Common Disputes

9.2019

by A. Jeanne Grove

At Kaufman, Dolowich & Voluck, our San Francisco Bay Area real estate attorneys represent TIC and Condo Owners in all types of disputes.

What is tenancy-in-common (TIC) ownership?

TIC is a form of common ownership of property. The term is often used to refer to co-ownership of a building with multiple dwelling units. Essentially, TIC ownership is a form of co-ownership in which each owner has a percentage interest in the underlying property. These individual TIC owners are typically described as co-tenants. Co-tenants may elect to sign a written TIC agreement that establishes their respective rights and obligations to the property, and to each other as co-owners.

What happens if a TIC co-tenant fails to meet their obligations under the law (i.e., fails to pay their taxes or mortgage)?

A TIC co-tenant who fails to pay their taxes or mortgage, or who otherwise fails to meet their obligations could put the other co-tenants in a rather vulnerable position. In many TIC arrangements, the co-tenants are all jointly liable for the monthly payment of a group loan that was taken out for the entire property. The entire property could therefore be targeted by the aggrieved party if one of the tenants were to default. In some cases, the court may choose to partition the entire underlying property and force a sale of the property.

In the event of any TIC dispute, the matter can be proactively resolved through a forced sale of the “problematic” co-tenant’s share of the property or through some other mechanism provided by the TIC agreement, such as mediation. These processes are not always straightforward, however, and may deepen and extend the conflict if not handled by a team of experienced San Francisco real estate attorneys.

If there is no written TIC agreement, what remedies are there to a co-tenant dispute?

In situations where there is no written, signed TIC agreement, the courts in California may provide only a single remedy to disputing co-tenants: partition. Partition of a TIC property is a statutory procedure through which control of the underlying property is given to the court, and the court then performs a forced sale. After the sale is complete, the court subsequently distributes the proceeds (in accordance with percentage ownership interests) to the previous co-tenants.

(See Partition FAQ’s by Jeanne Grove).

Can I bring a lawsuit against a co-tenant for a dispute related to our TIC agreement?

Whether you are entitled to bring a lawsuit against a co-tenant depends on the terms of the applicable TIC agreement. Most TIC agreements in San Francisco include binding arbitration provisions, thus precluding any possibility of civil litigation.

What are other ways to resolve a dispute with a co-tenant, other than a civil lawsuit?

Most TIC agreements require mediation and arbitration to resolve issues between co-tenants. In many TIC agreements, there is a requirement that co-tenants first participate in mediation before going through the binding arbitration process. Mediation is an informal negotiation process facilitated by a neutral third party (a mediator) in which each party can discuss their concerns and goals in a collaborative environment. The intent of mediation is to avoid furthering hostilities so that each party can potentially resolve the dispute in a less burdensome manner. However, the mediator has no decision-making power and merely serves to facilitate a settlement if one can be reached between the parties.

In an arbitration proceeding, a neutral arbitrator will evaluate the dispute at issue, often based on evidence presented at a hearing, and will come to a final decision that binds each co-tenant. Unlike a civil lawsuit, there is no right to appeal an arbitrator’s decision.

In the context of a TIC co-tenant dispute, what is a forced sale, and under what circumstances is a forced sale used?

A forced sale is one of the remedies available when one of the co-tenants has failed to satisfy their obligations under the TIC agreement. Essentially, in a forced sale, the co-tenant who has violated the agreement is required to sell their fractional share in the property either to the other co-tenants or to a third-party on the open market.

Am I entitled to sell my fractional share of the underlying property?

As a TIC co-tenant, whether you are entitled to sell your interest in the property (and the restrictions imposed if you choose to move forward with a sale) depends on the terms of the TIC agreement. Generally speaking, well-drafted TIC agreements allow co-tenants to sell their fractional share but impose certain limitations on their ability to do so. Common limitations include, but are not limited to:

- Other co-tenants have a right to purchase the fractional share first before it is offered on the open market
- The co-tenants must all approve of the decision to sell
- The selling co-tenant must resolve all their existing disputes and meet all their payment obligations under the TIC agreement before moving forward with a sale
- The co-tenant may only execute a sale of their fractional share on the open market if the other co-tenants approve the qualifications of the buyer

How can I avoid the partition of my TIC property?

It's worth noting that your TIC agreement may not give you (and other co-tenants) the right to partition the underlying property at all. In fact, many such agreements have provisions that preclude the co-tenants from partitioning the property for a specific length of time — anywhere from a few years to several decades — but may allow a co-tenant to sell their fractional share of the underlying property to other co-tenants or to other buyers on the market. In the alternative, some TIC agreements allow for a partition but require that the co-tenant interested in partitioning the property first make the other co-tenants an offer so that they can acquire the selling co-tenant's fractional share internally and avoid a partition.

What problems arise when co-tenants develop their own informal "customs" and "rules" for a TIC property?

It is fairly common for co-tenants to develop their own informal "customs" and "rules" that do not align with the terms of the written TIC agreement. Customary practices that develop over time can actually operate to modify the written terms of the TIC agreement in some cases. A co-tenant's failure to promptly enforce the TIC agreement may also constitute a waiver of those written terms.

An informal arrangement may seem innocuous so long as the current set of co-tenants enjoy a good working relationship. However, problems often arise when a new party becomes an owner and does not see eye to eye with the other owner on how to manage the property or a co-tenancy relationship sours for one reason or another. Informal practices that vary from the written terms of the TIC agreement create uncertainty and disputes, and even disclosure issues of disclosure in the event of sale of TIC ownership shares, where it is not clear whether one or more terms of the TIC agreement remain valid.

What are some examples of TIC disputes that are likely to be encountered by co-tenants?

Between TIC co-tenants, conflicts are likely to arise with respect to the following issues:

- Parking rights
 - Use of common areas for storage
 - Quiet hours and other nuisance-related issues (i.e., gaudy signage, noise complaints, light interference, and more)
 - Inequitable financing (i.e., one co-tenant borrowed to pay for their share, while another tenant paid out-of-pocket, thus leading to substantially different risk profiles in the event that the borrowing tenant chooses to default and exit the property)
 - Choosing to sell one's fractional share in the underlying property
 - Selling one's fractional share to a purchaser that some of the other co-tenants do not approve (specifically, situations where the co-tenants do not approve the sale despite having no reasonable justification for doing so)
 - Disputes over the right to rent a dwelling unit to a given tenant
 - Conflicts over the decisions made by the authorized manager of the property
-

What makes Jeanne Grove at KDV unique?



Jeanne Grove has been handling real property disputes for the past 15 years, including TIC and HOA/condo matters. Jeanne has extensive experience taking cases to trial and arbitration for TIC and condo/HOA disputes, and is also adept at resolving conflicts between parties. She focuses on finding cost-effective solutions for owners in a dispute, and can also implement strategies to leverage the best outcomes for clients in litigation. At KDV Law, our real estate practice group routinely handles cutting-edge matters for clients involved in a range of complex real estate issues, including those that involve a TIC or condo.

We engage closely with our clients to ensure that we have a comprehensive understanding of their needs, goals and limitations. We form collaborative relationships and maintain a transparent communication style, thus giving our clients the opportunity to discuss their concerns openly with our team. Our demonstrated success in achieving our clients' objectives gives us a substantial advantage over the competition.

Jeanne is currently a partner at Kaufman Dolowich Voluck, LLP and can be reached at 415-926-7600, 707-509-5260 or by email: jgrove@kdvlaw.com

**Kaufman Dolowich & Voluck
San Francisco**

425 California Street
Suite 2100
San Francisco, CA 94104
Tel: (415) 926-7600
Fax: (415) 926-7601

Sonoma

651 1st Street West
Suite M
Sonoma, CA 95476
Tel: (707) 509 - 5260
Fax: (707) 509 - 5261

This article is for informational purposes only, and should not be relied on as legal advice about specific situations. Readers should consult an attorney if they need help with legal matters. We invite readers seeking legal assistance to contact one of our attorneys to discuss their needs.