

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

KEEP YOUR JOINT VENTURE UP-TO-DATE

It was time to cash out. My entrepreneurial client had found a 30-unit apartment building for a very decent price, organized 15 people to put up the money, and closed on the deal. He did get a decent Joint Venture Agreement signed by all parties and then started managing. Over the years he did some renovations, changed the tenant mix, and produced reasonable positive cash flow for his 15 investors. Every year my client would send all the investors a T-776 Statement of Real Estate Rentals, which they could then give to their accountant to complete their tax returns.

Fast-forward to seven years later and it looks like it's time to sell. The building had been condominiumized, the market is hot, and all the investors agree it's time to implement the second part of the classic investor mantra, "Buy low-Sell high." My client retains a realtor experienced in marketing projects, they work up a marketing plan, and sales begin. Things are going well.

The first couple of sales are completed and, sadly, one of the investors passes away. The deceased investor's estate is now not nearly as cooperative as the deceased investor had been. For the next round of sales, my client (through his lawyer) gets in touch with the lawyer for the estate requesting a discharge of the investor's joint venture caveat. The estate refuses. The estate lawyer says that on reviewing the Joint Venture Agreement and the deceased's financial records, it appears that my client never provided financial statements. The Joint Venture Agreement clearly said that my client would report to all the investors on a quarterly basis and provide accountant prepared financial statements once a year. There were a couple of quarterly reports but that was it.

Where were those interim and yearly financial statements, the estate lawyer wanted to know. My client indicated that after doing the first couple of quarterly reports, the investor group said they didn't really care if they got that paperwork. As long as they were getting positive cash flow cheques, that was good enough for them. And, of course, they needed their T-776 Statement of Real Estate Rentals, which summarized their share of profit (or loss) for the year. That's all there was, my client told the estate lawyers.

What, no financial reporting? The estate lawyers were now very suspicious. They demanded that my client provide his tax returns for the year, bank statements, property manager's reports, and any other piece of paper they could think of that they could forensically examine to prove their suspicions that my client had been taking all the investors for a ride. The fight was on!

It took a long time and a court application to calm down the estate lawyers so that they would consent to future sales. In fact, the joint venture lost a couple of sales because they couldn't promise to remove the investor caveat. All in all, it cost the joint venture substantial time and money before everything was sorted out.

Lessons Learned:

1. Do what the Joint Venture Agreement says, or
2. If you are not going to follow the Joint Venture Agreement, at least have a paper/email trail that proves you consulted with and got the agreement of your fellow investors.

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3. Overall, your best protection is to do formal amendments to the Joint Venture Agreement that clearly document any changes to the original agreement.

**FOR ALL YOUR ALBERTA REAL ESTATE LEGAL NEEDS,
CONTACT BARRY MCGUIRE TODAY!**

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