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# What If...?

Smart Real Estate Investors plan for success. Once you have a Joint Venture partner in agreement with your idea or deal and each of you has performed your background check (see detailed checklist and questionnaire in step #4a of Joint Venture Secrets), make sure you have open and clear communication from the beginning.

The best time to talk about issues is when there aren't any. (Discuss them during the 'honeymoon' period). In conjunction with you and your Joint Venture partner sitting down and completing the Joint Venture worksheet, you both need to discuss a couple of "What if?" scenarios:

For Example: What if...

- 1) The money partner backs out before closing?
  - ⇒ Are there any funds provided up front in a trust account? What happens to this money?
  - ⇒ Are there any penalties in place?
- 2) We don't have closing costs and reserve fund?
  - ⇒ How much?
  - ⇒ Detailed budget?
  - ⇒ Minimum amount of money in the bank account?
- 3) We need a cash call? Who can/will come up with extra cash?
  - ⇒ 50/50% split?
- 4) One of us wants out? Should we have ...
  - ⇒ A buy – sell?
  - ⇒ Right of first refusal?
  - ⇒ Right to call for a sale?
- 5) It's a family JV? Do we understand dealing with family is different than dealing with an arms-length party?
- 6) The JV Finder is managing but...
  - ⇒ Becomes too busy?
  - ⇒ Is not a good manager?
  - ⇒ How is the Accounting and Property Management handled?
- 7) One of us dies or goes bankrupt?
- 8) The bank says only one of us can be on title?
  - ⇒ Can both parties qualify for mortgage?
  - ⇒ Do we have 2 – 3 different plans on how we will structure the Title and Mortgage?

This list is a great start. As you complete more Joint Ventures you will continue to add to this "What if" list, because the best time to design the exit is from the beginning.

# JV Checklist – Does / Should Your JV Agreement Deal With...?

All Good Joint Venture agreements do/ should have the following elements in them to create win/win relationships with your Joint Venture partners.

Use this in conjunction with the templates provided to ensure you have all elements of a good Joint Venture agreement. Use this template as a guide to complete a Joint Venture agreement from the ground up. Make sure you have legal council to finalize your agreement.

- 1) Who are the parties?
  - ⇒ time limit
- 2) What are their contact details?
  - ⇒ right of first refusal
- 3) What is the legal description of property?
  - ⇒ buy/ sell
- 4) What is the municipal description of property?
  - ⇒ compulsory sale
  - ⇒ sale of a partial interest
- 5) Who manages?
  - ⇒ What are their contact details?
- 6) % interest of all parties
- 7) Does JV cover all properties that might be purchased?
- 8) Who holds title? What if only one party is on title?
- 9) For tax purposes, what/ whose accounting methods?
- 10) Transfer to related party
- 11) All transferees to be bound by Agreement
- 12) Action / expenditures of \$\$ by Manager or one party on their own
- 13) Major decision – who makes?, define ‘major’
- 14) Bank accounts
- 15) Parties (affiliates) doing business with the JV
- 16) Financial Contribution
  - ⇒ initial funds & additional funds
  - ⇒ default
- 17) Rental proceeds – how to distribute
  - ⇒ When Monthly? Quarterly? Yearly?
- 18) Accounting, who does and to what level?
  - ⇒ day to day
  - ⇒ year end
- 19) Reporting
  - ⇒ Monthly/ Quarterly/ Yearly?
- 20) Guarantees – who provides?, How to release
- 21) Finders Fee?
- 22) Transfer / sale of JV interests
- 23) Termination of Agreement
- 24) Defaults, rights and remedies
  - ⇒ indemnification
  - ⇒ partition or partition & sale
- 25) Dispute resolution
  - ⇒ do not deal with
  - ⇒ arbitration only
  - ⇒ mediation first, then arbitration
  - ⇒ court action
  - ⇒ other
- 26) General provisions
- 27) Applicable provincial laws
- 28) Time is of the essence
- 29) Notices and delivery of documents
- 30) No agency
- 31) No partnership
- 32) Obligation should be several, not joint
- 33) No unilateral action
- 34) Invalid clause is severable
- 35) Insolvency and termination
- 36) Appropriate corporate action
- 37) Entire agreement
- 38) Signed in counterparts allowed
- 39) Costs of legal proceeding