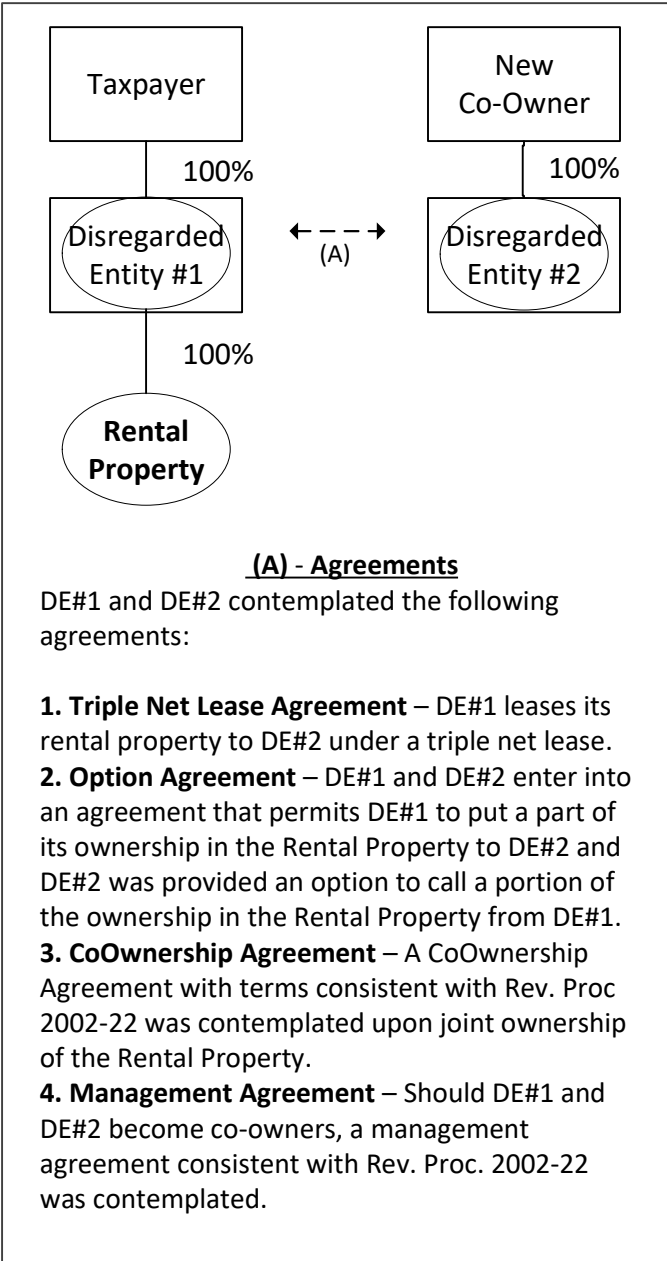


Joint Ownership Does Not Result in Partnership

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Facts



(A) - Agreements

DE#1 and DE#2 contemplated the following agreements:

1. **Triple Net Lease Agreement** – DE#1 leases its rental property to DE#2 under a triple net lease.
2. **Option Agreement** – DE#1 and DE#2 enter into an agreement that permits DE#1 to put a part of its ownership in the Rental Property to DE#2 and DE#2 was provided an option to call a portion of the ownership in the Rental Property from DE#1.
3. **CoOwnership Agreement** – A CoOwnership Agreement with terms consistent with Rev. Proc 2002-22 was contemplated upon joint ownership of the Rental Property.
4. **Management Agreement** – Should DE#1 and DE#2 become co-owners, a management agreement consistent with Rev. Proc. 2002-22 was contemplated.

Holding

The IRS in PLR 201622008 determined the contemplated co-ownership of the Rental Property would not constitute ownership in a partnership. The IRS evaluated the Option Agreement, CoOwnership Agreement, and Management Agreement in determining these agreements would not violate any of the requirements provided in Rev. Proc. 2002-22.

Summary of Rev. Proc. 2002-22 Requirements

1. Each co-owner must hold title to the property (either directly or through a disregarded entity) as a tenant in common (TIC) under local law.
2. The number of co-owners must be limited to 35.
3. The co-ownership must not file a partnership or corporate tax return, conduct business under a common name, or otherwise hold itself out as a partnership or other form of business entity.
4. The co-owners may enter into a limited co-ownership agreement that may run with the land.
5. The co-owners must retain certain voting rights described in Rev. Proc. 2002-22
6. Certain restrictions on the alienation of a co-owner's interest are allowed in the co-ownership agreement as discussed in Rev. Proc. 2002-22.
7. If the co-tenancy property is sold, any debt secured by a blanket lien must be satisfied and the remaining sales proceeds distributed to the co-owners.
8. Each co-owner must share in all revenues generated by the property and all related costs in proportion to the co-owner's undivided interest in the co-tenancy property.
9. The co-owners must share in any indebtedness secured by a blanket lien in proportion to their undivided interests
10. A co-owner may issue an option to purchase the co-owner's undivided interest (call option), provided that the exercise price for the call option reflects the fair market value of the co-tenancy property at the time the option is exercised
11. The co-owners' activities must be limited to those customarily performed in connection with the maintenance and repair of rental real property.
12. The term and renewal period for any management agreement cannot exceed 12 months.
13. All leasing must qualify as bona fide leases for federal tax purposes. Rents paid by a lessee must reflect the fair market value for the use of the property.
14. The lender on any debt that encumbers the property or on any debt incurred to acquire an undivided interest in the property is not a related person to any co-owner, the sponsor, the manager, or any lessee of the property
15. The amount of any payment to the sponsor reflects the fair market value of the acquired co-ownership interest (or the services rendered) and does not depend, in whole or in part, on the income or profits derived by any person from the property.