



What is a Partition?

Interested in selling a piece of property but a co-owner is not?

What can you do when you want to sell your interest in a piece of property and a co-owner does not? This issue happens surprisingly often. In many cases, people have been forced into co-ownership with an unfavorable relative or sibling due to a loved one's estate plan, or voluntarily purchase property with a now ex-significant other. Problems arise when a co-owner does not want to sell the property because he or she is living on the property, or perhaps because they just want to make your life difficult. The legal remedy for this situation is partition.

The first issue to be decided in a partition is whether the property is divisible by the court. In the days of English common law, most property subject to partition were huge tracks of land. In that case, the court would look at a map and determine an equitable split of the property between the two co-owners. This worked very well for the gentry of England. Today, however, most of us do not own vast estates of land but rather single family homes located in residential areas. In this situation, the court cannot equitably divide the property, and accordingly, the court will order a sale of the property. The sale occurs in one of two ways: 1) A special magistrate can be appointed to list and sell the property at private sale or; 2) the subject property can be sold at auction to the highest bidder. The proceeds of the sale will then be split between the parties in proportion to their ownership interest.

As part of the partition action, the court can make a determination if any party is entitled to special equity. This means, that if one party has been paying all the taxes or insurances, or maintenance and upkeep of the property, that party may be entitled to a larger portion of the proceeds from the sale of the property. This portion of the case may require a trial to determine the division of the proceeds between the parties. A party to



Will W. Sunter

TEL 941.639.1158

EMAIL wsunter@farr.com

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the partition is entitled to have its costs and attorney's fees paid, but such attorney's fees are normally proportionate to your ownership interest in the property. If the property is sold at public sale, the proceeds of the sale will be held by the Clerk of the Court until the special equity decisions have been made by the court.

If you are interested in a partition action, I strongly advise that you seek counsel to advise you of your rights.

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