



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

Partition Actions: How to Terminate Joint Ownership of Real Property

9.2019

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What is a Partition action?

Partition is the division of real or personal property between or among two or more co-owners, such as joint tenants or tenants-in-common. Partition is not a remedy available to owners who hold title as community property or quasi-community property. This article focuses on the Partition of real property.

What are the types of Partition?

There are three methods of Partition provided by state law: (1) Partition by Physical Division, (2) Partition by Sale, and (3) Partition by Appraisal.

What is a Partition By Physical Division?

Also known as "Partition in Kind," a Partition by Physical Division requires the Court to divide the land by its proportional value. This method of Partition typically applies to properties involving acreage, such as rural properties or undeveloped land. A Court will not order a Partition by Physical Division if it would result in an owner receiving a portion of the land that is materially less than the share of the money which could be obtained through the sale of the land as a whole. A Court is also required to comply with the Subdivision Map Act, local ordinances, zoning ordinances, and a general plan for the area in which the property is located, which prevents owners from using the Partition remedy to subdivide their parcels of land without first complying with the statutory scheme for subdivision of property.

What is a Partition By Sale?

A Partition By Sale allows a co-owner of real property to force a sale of the entire property despite the unwillingness of any co-owner. Absent a waiver, an owner has an absolute right to partition his or her interests in the property and force a sale of the property. The Court must determine that under the circumstances, sale and division of the proceeds would be more equitable than division of the property. The Partition by Sale can take place at public auction or private sale, or at the recommendation of a referee, by listing the property for sale with the assistance of a licensed real estate broker.

What is Partition By Appraisal?

A Partition By Appraisal allows one or more owners to purchase the interest of the other owner(s) at a value assessed in a court-ordered appraisal. This method is available only if the interests of all parties are undisputed or have been adjudicated, and the parties agree in writing to proceed with a Partition by Appraisal.

What is the process for a Partition action?

A Partition action is a legal action filed in Court that names all parties who have or claim an interest in the subject property, including owners, lienholders, lenders, and holders of future estates. The action commences with the filing of a Partition complaint, which is filed and served on all named defendants. The Partition action then proceeds like a standard civil lawsuit, except there is no right to a jury trial on the issue of Partition. The Partition action proceeds as a court trial and a judge renders a decision on the determination of interests of the parties and the manner of Partition. The judge will also appoint a referee to make recommendations and oversee the Partition process.



Are there any defenses to a Partition action?

A Partition is generally a no-fault proceeding, meaning there are generally no defenses that an owner can raise. One exception is if the owners have waived their right to Partition. A waiver may be verbal, implied, or written.

What costs are involved in a Partition action?

A Partition action should be filed with the assistance of an experienced attorney. A Partition action typically involves the cost of a title report, legal fees and costs for handling the lawsuit through trial, and referee costs. An uncontested judgment for Partition could cost at least \$25,000 in legal fees and costs. The amount of legal fees escalate when the Partition action is contested, or involves additional issues in dispute between the owners.

Can I recover my legal fees and costs in a Partition action?

Yes, under California law, a party who files an action for Partition is entitled to recover a portion of his/her reasonable attorney fees and costs paid or incurred for services for the common benefit of the property.

What are common issues that arise in a Partition action?

Common issues include: (1) offsets, such as when only one owner has paid all operating expenses for the property; (2) damages, when one owner has caused damage to the property or caused a depreciation in value of the property, and (3) landlord/tenant issues, such as when an owner claims tenant rights and refuses to deliver possession of the property upon sale.

When is a Partition action usually necessary?

Any owner can file a Partition action at any time, absent a waiver. The most common cases are among family members who co-own property without an ownership agreement; owners who were formerly in a romantic relationship, but not legally married; and business partners who did not properly document their co-ownership obligations.

Can Partition actions be resolved before litigation, or before trial?

Yes. Like any legal dispute, parties are encouraged to settle a Partition action prior to trial. One common settlement option is when owners cooperate in the sale of the property by engaging a mutually-agreeable broker to list the property, rather than forcing a formal, judicial sale. Alternatively, owners can agree to "buy out" the interest of the owner who wishes to sell the property.

What can Jeanne Grove at KDV offer?



Jeanne Grove has been handling real property disputes for the past 15 years, including numerous Partition actions. She regularly advises property owners on co-ownership disputes, including tenancy-in-common and condominium/homeowner association matters, as well as boundary, title easement, development and construction matters. Jeanne has extensive experience taking cases to trial and arbitration, but is also adept at finding practical and cost-effective solutions for clients through mediation and other settlement methods in order to avoid litigation when possible. Jeanne also holds a California real estate broker's license, and can assist clients with real estate transactions, such as in settlement of a Partition action when an owner agrees to sell/buyout the other owner.

In 2013, she received the Real Property Section Morning Star award from the California State Bar for her excellence in leadership in the real property legal community. In 2017, she received the Unity Award from the Minority Bar Coalition for her work advancing the cause of diversity in the legal profession.

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