

PARTITION ACTIONS IN COLORADO

When any land is held in a joint tenancy, Colorado's Partition Laws (*CRS §38-28-101 thru §38-28-110*) provide every joint owner an absolute right to partition the property by filing a Partition Action in the District Court where the land is located.

In an action to partition, all persons with existing or future interests in the property, and anyone with an interest in the land, including lenders, must be made party to the partition action. If any portion of the property is subject to a lease, the lease tenant should also be named in the law suit, although it is common to obtain the tenant's stipulation that property will be sold subject to the leasehold, which can affect valuation in either direction.

Any joint owner can file the partition action, and just by asking, there will be a partition. Courts have wide discretion to fashion a fair result, but the court has no discretion to deny partition, because partition is a matter of right under the law. Even though only one joint owner asks for the partition, everyone will pay the bill out of the property settlement, as costs/expenses are allocated amongst all the parties, and taken from the proceeds of the sale (*if any*).

A partition action can be very costly. Litigation of this sort can easily take a year to 18 months. If the action goes to trial, the litigation costs can easily double or triple.

The court's goal in a partition action is to make sure everyone gets their fair share. Almost always, some form of accounting is necessary to adjust for initial contributions, down payments, mortgage and other carrying and maintenance costs during the co-ownership. After establishing ownership rights to the property of each joint owner, the court will take into account each party's contributions to the property, including renovations, maintenance, or payment of expenses. In cases where a decedent's estate is a part owner of the land to be partitioned, the will of the decedent should be probated at the same time as the partition action. If any portion of the property is subject to a lease, the lease tenant should also be named in the partition action law suit.

Once the court establishes the facts through a detailed accounting, partition actions will usually go through three phases if the parties are unable to agree:

- 1) **Mediation.** The court will order mediation aimed at reaching a mutually agreed division (*Voluntary Partition*). Very often, two rounds of mediation are required, first to review partition options, and a second round to hammer out the allocation of costs. If that doesn't work:

2) **Commissioner.** Court will appoint a commissioner to recommend a division (*Commissioner's Division*). If that doesn't work:

3) **Judicial Sale.** Court will order a judicial sale of the property conducted by the Sheriff (*Judicial Partition, or Partition by Sale*). In the event of a sale, after payment of court costs, Commissioner's fees, outstanding taxes, mortgages, any other debts, and attorney's fees, the proceeds of the sale are then distributed among the joint owners according to their ownership rights.

Partition actions can be complex and can get contentious fast. The kinds of issues that can complicate things, delay the process, and drive up costs are:

- Accounting problems & disagreement over how accounting should be done
- Cross complaints & counterclaims
- How aggressively the other parties defend against the partition
- Disagreements over valuation of the land, or of certain parcels
- Disputes over ownership or valuation of mineral rights and water rights
- Problems involving the survey, purchases, or historical conveyances of land
- Title infirmities & failures to properly record transfers, deeds & easements
- Temporary injunctions to prevent waste, or demands for accountings
- Placement of spurious liens on the land or on certain parcels
- Disputes over payment of rents, or rental contracts during the court case
- Disputes regarding the interpretation of a will or multiple wills
- Difficulties in selection of the Commissioner for Commissioner's Division
- Disputes over the process for the Sheriff's Public Sale of the property

Attorneys handling this type of litigation are very specialized in real property law, family law, probate/trust, accounting and tax issues and both sides would require their own legal counsel for the 1 - 1 ½ years that the partition action will require.

The best way to avoid the crippling expense of a partition action is for the current joint owners to agree to a fair, reasonable and voluntary division, without involving the courts at all.