

Cutting the Pie — Real Estate Partition Actions in Pennsylvania

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When more than one person owns an interest in Pennsylvania real estate, and the owners can't agree on the management or sale of the property, a special type of equity proceeding called Partition Action is the way to resolve the issues in court. In my practice, I see these situations arising when two or more individuals own property together for a variety of reasons. Some inherit the property together and have different needs or wants for their interests. Others buy property together, either for investment as tenants in common or joint tenants, or buy a house to live in together or in anticipation of a marriage which does not occur. Sometimes, a life tenant, holder of a life estate in property subject to a remainder held by someone else, uses a property in a manner objected to by the owner of the remainder.

Situations where multiple owners of property do not use partition, but instead use other legal remedies, include divorce, where distribution of real property is usually determined within the divorce proceedings, though a partition action can follow a divorce where property distribution was incomplete, and life estates where the life tenant is accused of failing to maintain the property, where a separate type of action for "waste" is available. Also, partition actions are not necessary where title to real property is held in a corporation, limited liability company, or general or limited partnership. Laws relating to those entities, and the documents executed in connection with those entities, such as shareholders', members' or partnership agreements, provide the means for division of interests in both real estate and other assets of those entities.

The word partition suggests that the property is actually cut into different pieces, like slices of a pie. That comes from the origins of partition in English common law, the old '*writ de partitione facienda*', which allowed the division of a whole property into separate parts, each held completely by one of the former co-owners of the whole. This legal action was very limited, however, and did not deal with all different types of co-ownership, did not deal with property which could not be cut into multiple parcels, and did not address the accounting for money between co-owners. Courts of Equity took over partition to address these issues, and the concepts of

financial compensation to one co-owner for imbalances in division of the property, called “owelty of partition”, and of the appointment by the courts of “Special Masters” to handle some of the details of the partition, were introduced.

In Pennsylvania, the various legal and equitable actions for partition arising from common law and specific statutes were abolished and all partition actions are now equity actions under Rule 1551 et. seq. of the Pennsylvania Rules of Civil Procedure, though actions involving the estate of a property owner who has died may end up in the Orphans’ Court, and be subject to additional rules there.

PA R.C.P. 1551 provides that a Partition Action shall follow the rules of civil procedure generally, except as modified by the Partition Rules. The Partition Rules provide that the action must be brought in a county where all or part of the property is located (Rule 1552), that any co-tenant (here the word co-tenant refers to an owner of an interest in the property, not to someone occupying as a tenant under a normal, one year or other short term lease) may bring the action, but all co-tenants must be parties (Rule 1553), and that the complaint filed with the court must include a description of the property, and describe the nature and extent of each co-tenant’s interest in the property (Rule 1554). If a co-tenant plaintiff is not in possession, the rules preserve the right to claim an offset for the plaintiff’s share of the fair market rental value of the property against the share the tenant in possession would otherwise receive in partition (Rule 1590). However, the complaint must plead the exclusion of the plaintiff from the property and make the claim for plaintiff’s share of the rental value, since otherwise those claims can be waived. Likewise, the complaint should include claims for accounting of rents or other profits or benefits received by the other co-tenant(s), and credits for taxes paid, the cost or value of repairs made to the property, other services rendered by the plaintiff, and liabilities incurred by the plaintiff. These items become part of the decision and order provided under Rule 1570. Any defendant may also raise these issues in New Matter following an Answer to the complaint. However, non-partition claims between the parties may not be combined with partition claims in the same lawsuit.

The rules allow the joinder of causes of action for partition of multiple parcels in Pennsylvania owned by the same cotenants in the same action, and even allow the joinder of actions involving multiple properties where not all of the co-tenants have an interest in every property, if all the

properties share a common source of title or grantor (Rule 1555). If the plaintiff fails to join causes of action for partition of all of the properties which could have been included in the complaint, the other co-tenants are free to bring a counterclaim in the same action regarding partition of such other properties.

If a plaintiff fails to join a co-tenant who should be a party to the action, any defendant has the right to raise the interest of that co-tenant in the action by filing preliminary objections to the complaint. Owners of remainder interests after life estates, as well as owners of reversionary interests, whether or not conditional, should all be included in the partition action. However, tenants leasing the property for periods of less than 20 years, mortgagees and lien holders whose interests would not be changed by the partition of the property, would not be appropriate parties to the partition action.

Once a complaint in partition is filed with the court, and served on all of the co-tenants as defendants, if the defendants do not answer the complaint or in their answers admit that all of the cotenants are parties to the action, and that part of the property is in the county where the action is filed, the judge can enter an order identifying all of the co-tenants and their interests, and directing partition of the property. If the complaint and any answers filed do not provide on their own a sufficient basis for the judge to enter an order for partition, the court can schedule a hearing or trial to determine disputed issues, after which an order for partition can be entered if the court finds the requirements met. While that order is appealable under Rule 311(a)(7) of the PA Rules of Appellate Procedure, the bases for such an appeal are limited. Simply not wanting to proceed with an otherwise proper partition does not provide an adequate basis for appeal.

After an order directing partition is entered by the judge, a preliminary conference among the judge and the parties or their attorneys is required by Rule 1558. At the conference, the judge is to consider whether the parties can agree on a plan of partition or sale, though it is usual that they cannot. The court then considers whether the issues in the partition can be simplified or narrowed. The judge may decide to continue to handle all matters pertaining to the partition directly, but the Partition Rules specifically allow for the appointment of a master, whom most judges appoint to handle the details of the partition under the supervision and subject to the final approval of the court. The master can be directed to hear the entire matter, or be limited to act on only certain issues as the judge

directs. Though the Partition Rules do not specifically require that the master be a lawyer admitted to practice law in Pennsylvania, the master does have a judicial function as an officer of the court, and it is the normal practice of judges to appoint lawyers with knowledge and experience pertaining to civil trial practice, and partition actions in particular. In fact, I currently serve as a partition master.

Following a normal general appointment, a master will generally determine whether or not the property can be divided into separate “purparts” or parcels, like pieces of the pie for each co-tenant or each group of co-tenants who want their interests to remain undivided. Usually, this can work with larger tracts of land subject to subdivision, but not with single homes or other properties not easily divided. Purparts can’t always and don’t have to be equal, and partition allows inequality to be balanced out by the payment of cash known as “owelty” from the co-tenant who receives greater value to the co-tenant who receives lesser value.

Next, the master normally appoints an appraiser at a cost to be shared between or among the co-tenants, to value the property as a whole and the different purparts or parcels into which it can be divided. A title search may also be ordered or the parties may provide the information on mortgages, liens and other encumbrances affecting the property, and the co-tenants who are personally obligated on any loan secured by a mortgage on the property.

The master also obtains information by stipulations of the parties or where there are disputes, through hearing(s) in front of the master, on the adjustments to be made to each co-tenant’s interest for use and occupancy of the property, rents and other benefits received, taxes, repairs or other amounts paid, and services rendered by each toward the property. After obtaining the appraisal and this other information, the master can seek the agreement of the parties on division of the property into purparts, and on owelty payments to balance the value of unequal purparts. However, in many cases where purparts are not possible, a private sale of the property between the co-tenants pursuant to Rules 1566 and 1567 will be considered, and if that does not work out, a public sale of the property under Rule 1568, at auction or through the marketing and sale of the property through a broker may be employed.

Once the master has completed his or her job of collecting information, and determined what the master believes should be the result of the partition pursuant to the rules, the master prepares a report to the judge under Rule

1569, which is provided to the co-tenants. Any co-tenant may take exceptions to evidentiary rulings, findings of fact. The report usually tracks the requirements for the decision and order which the judge must enter under rule 1570, so that the judge can simply adopt all or any parts of the report as his or her decision, and address any exceptions to the report made by any co-tenants.

If the decision orders a private or public sale of the property, the rules allow the judge to order the master to conduct the sale, after which the master files a return of sale under Rule 1573 and requests an order of court confirming the sale and payments to all persons entitled from the proceeds. Such an order becomes final if no party files post trial motions within ten days of the order.

By the sale portion of the partition action, many co-tenants recognize that the costs of following the rules can reduce the amount which they realize for the property, and many consent to purchase by one of the other's interest, or to sales through real estate brokers rather than auction, to attempt to maximize the value they can receive for the property. At any point in the partition process, the parties can end the action by agreement on how to resolve their differences. However, the longer the action takes, the more legal fees and costs the parties incur with their own counsel, and the more masters' fees the parties share. All of these costs suggest that early compromise of a partition action is advisable. However, as with any legal action, disagreement on key issues can make compromise difficult, and necessitate following through with the entire legal process of partition. Partition in Pennsylvania is a well tested equitable court process which results in the separation of co-tenants' legal interests in real estate. It is not cheap, but it is efficient and should be used when co-tenants can't agree on how to share the real estate pie.

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