

Urgh. I No Longer Want to Own Property With that Person. What Do I Do?

By Dominique Bosa-Edwards

If you hold title to real property along with another person, and you no longer wish to jointly own that property, there are various ways in which you may proceed to legally separate or divide ownership of that property. A partition of real property involves the division of real property between two or more co-owners. More specifically, it is the “act of dividing [or] . . . the division of real property held jointly or in common by two or more persons into individually owned interests. — Also termed *partition in kind*.” PARTITION, Black’s Law Dictionary (11th ed. 2019).

There is more than one type of partition, however, most jurisdictions prefer physical partitions, also known as “actual” or “in-kind” partition. “The laws in all American jurisdictions seem to reflect this principle by providing for a clear presumption of actual partition of commonly held lands.” Lawrence Anderson Moye IV, *Is It All About the Money? Considering A Multi-Factor Test for Determining the Appropriateness of Forced Partition Sales in North Carolina*, 33 Campbell L. Rev. 411, 416 (2011).

A preferred physical partition, literally physically divides title and possession to real property. After real property has been partitioned, each co-owner will end up with sole ownership over their specific share, relative to the same estate they owned before the division.

For example, if two owners jointly own a house and for whatever reason the two owners no longer want to co-own the property, generally the co-owners have three options for how to separate title:

- (1) Owner One can buy out Owner Two’s interest in the house.
- (2) Owner Two can buy out Owner One’s interest in the house.
- (3) The property may be legally divided, or partitioned. Instead of each owner having an undivided interest in the property as a whole, each will have their own separate interests.

*If the partition is not feasible, the property may also be sold and proceeds divided among the co-owners.

Chapter 39 of the Nevada Revised Statutes (NRS) describes the pertinent law on partitions in Nevada. The Nevada legislature’s promulgation of partition law reflects their vision to create a statutory scheme which truly embodies equity.

During an action for partition, the court generally follows a set of rules to divide the property according to the shares to which each party is entitled in law. The process of partition follows a statutory scheme and courts will decide a partition “so as to do the least possible injury to the several owners.” NRS 39.010-39.490; *Kent v. Kent*, 108 Nev. 398, 835 P.2d 8 (1992).

To begin a partition of real property, a person may file an action for partition when they hold property with at least one other person as a joint tenant, or tenant in common, in which at least one person has an estate of inheritance. NRS 39.010. “Generally, an adult tenant in common has an absolute right to partition.” *Terrible v. Terrible*, 91 Nev. 279, 282, 534 P.2d 919, 921 (1975).

Where a party petitions the court, Plaintiff is required to name all parties, to the best of their knowledge, that may have an interest in the property. NRS 39.020. Additionally, Plaintiff must record notice of the pending litigation and describe the property in the county where the property is located. This recording serves as notice to all persons who may have an interest in the property. NRS 39.020.

After a partition deed is executed, each co-owner becomes the absolute owner of their share of the property and may dispose of the property as they want, meaning they can sell, transfer, or gift it to anyone they want. The “[f]undamental goal of partition is to divide property so as to be fair and equitable and confer no unfair advantage on any cotenant.” N.R.S. 39.440. *Kent v. Kent*, 108 Nev. 398, 835 P.2d 8 (1992).

The court will divide the property and allot portions to the respective parties according to their respective rights. NRS 39.130.

If a partition cannot be made without prejudicing owners, because an equitable in-kind division of the property is not possible, the court may order or the owners may agree to sell the property. NRS 39.120. Sometimes an unequal partition may be ordered. If this is the case, where the partition cannot be made equal, compensation may be made to account for the inequality.

Pursuant NRS 39.270, a sale “of real property under this chapter must be made by public auction or by private sale”, but the actual sale must be made to the highest bidder. Proceeds of the sale are distributed to those entitled parties whose estate has been sold. NRS 39.300.

There are, however, instances where parties’ interests are inconsistent with partition. The court may lean away from granting a partition whenever interests are inconsistent with partition:

Equity will not award partition at the suit of one in violation of his own agreement. . . or where partition would be contrary to equitable principles. Partition will not be awarded in a court of equity, where there has been an agreement either not to partition, or where the agreement is such that it is necessary to secure the fulfillment of the agreement that there should not be a partition. Such an agreement may be verbal, if it has been acted upon, and it need not be expressed, but will be readily implied, and enforced, if necessary to the protection of the parties.

Terrible v. Terrible, 91 Nev. 279, 282–83, 534 P.2d 919, 921 (1975)

The division of property by co-owners does not always have to end in litigation. However, if you would like more information, or need to move forward with a partition lawsuit, reach out to Dominique Bosa-Edwards, Esq., of Marquis Aurbach at (702) 207-6046.