

Legal Corner

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

by Dominique Bosa-Edwards, Esq.

If title to real property is held with another person, and any owner no longer wishes to jointly own that property, there are various ways to proceed to legally divide ownership of that property. Of course, the owners can agree to a division or sale of the property so long as the applicable laws and ordinances are followed. If the owners cannot agree, a partition action may be necessary and a court will decide the division.

A partition involves the division of real property between two or more co-owners. Partition is "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). Here, the property is physically divided and each co-owner ends up with sole ownership over a specific share, relative to the same estate owned before the division. In addition, partition may be by sale of the property.

For example, if two owners jointly own land and they no longer want to co-own the land, the co-owners can agree to purchase the interests of the other or the court will 1) either give each owner their own separate interests, or 2) direct the sale of the land and the division of proceeds among the co-owners.

Of course, a partition action must be filed with the court pursuant to Chapter 39 of the Nevada Revised Statutes (NRS) which is the pertinent law on partitions in Nevada. The court must follow NRS 39 to divide the property according to the shares to which each party is entitled in law. The court's general obligation is to decide a partition "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).

Plaintiff petitioner 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. 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, sell, transfer, or gift the property to anyone they want.

If a partition cannot be made without prejudicing owners, because an equitable in-kind division of the



Avece Higbee, Phil Aurbach, Terry Moore, Scott Marquis, Jordan Peel
(David Alleman and Lance Earl – not pictured)

NEVADA Premier
COMMERCIAL REAL ESTATE
LAWYERS

1972  2022
MARQUIS AURBACH
C H T D .

10001 PARK RUN DRIVE | LAS VEGAS, NV 89145
MACLAW.COM | (702) 382-0711

Legal Corner - Cont.

property is not possible, the court may order or the owners may agree to sell the property. NRS 39.120.

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. *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. Often a resolution can be reached between the parties. Should litigation be necessary, the property may end up being sold if physical partition is prejudicial to the co-owners.



Dominique Bosa-Edwards is an attorney with the Las Vegas law firm Marquis Aurbach ("MAC"). She can be reached at (702) 382-0711 or by visiting the firm's website at maclaw.com.

Corporate Event & Headshot Photography

<https://dragonflypd.com/>

NEWMARK
KNIGHT FRANK

**Delivering
Exceptional Results.**

GROWING The Platform	INCREASING Market Share
RECRUITING Top Talent	CLOSING Large Assignments

Serving Las Vegas in Capital Markets, Landlord & Tenant Advisory, Property Management, and Valuation & Advisory.

3930 Howard Hughes Parkway, Suite 180
Las Vegas, NV 89169
t 702-733-7500

nmrk.com

MARNELL PROPERTIES

www.marnellproperties.com | 702.739.2000

MDLGroup

We are actively growing our brokerage team!

SPLITS	SUPPORT	SYNERGY
---------------	----------------	----------------

VOTED BEST PLACE TO WORK BY GlobeSt.com

VOTED TOP WORK PLACE BY [LASVEGAS REVIEW JOURNAL](http://LASVEGASREVIEWJOURNAL)

For a confidential conversation, contact Hayim Mizrahi, CCIM
702.941.7376 | hmizrahi@mdlgroup.com
www.mdlgroup.com

CORFAC
INTERNATIONAL
MEMBER - PARTNER