



Featured News

ALERT

THE PARTITION OF REAL PROPERTY ACT (“PRPA”)

Prior to January 2022, a party to a partition action could only buy-out another party’s interest in the property if the parties stipulated to such buy-out. A “partition by appraisal” (as this procedure was referred to) required the consent of the parties. If the parties did not consent, the property would be sold to a third party. (Note: even though partitions in kind are favored by law, they do not regularly occur because most properties are not subject to such division; accordingly, we are assuming in this Alert that partition in kind is not possible.)

In January 2022, there was a slight change to California law when the Uniform Partition of Heirs Property Act (the “Heirs Act”) went into effect. In order to invoke the Heirs Act, a party needed to prove that one of the owners acquired the subject property through an inheritance. If that condition was satisfied, the party could then demand a partition by appraisal, regardless of whether the other party stipulated to it.

On January 1, 2023, there was a more fundamental change to California law when the PRPA replaced the Heirs Act. Under the PRPA, any party to a partition action has the right to request that the court determine the property’s value, and potentially buy-out the other owner, rather than have the property sold. There is no requirement for a party to first establish that one of the owners acquired the subject property through an inheritance.

Under the PRPA, the only two requirements are that (i) the property be held in tenancy in common without an agreement in the record binding all the cotenants in a partition and (ii) the partition case is filed after January 1, 2023. So long as those two requirements are met, any party to a partition action can request that the Court determine the value of the subject property.

If requested by a party, the court will determine the fair market value of the property by appointing an appraiser, unless the parties have agreed to the value or to another method of valuation. Also, if the court determines that the cost of the appraisal outweighs its evidentiary value, the court will determine the fair market value following an evidentiary hearing.



Assuming that the court has appointed an appraiser, the appraiser will submit the verified appraisal to the court. All parties can present arguments and evidence in response to the appraiser's report. Regardless of whether the parties object or provide their own evidence, the court will hold a hearing to determine the property's value. The court will send notice of its determination of value to the parties.

Once the court's valuation is complete, the parties will be introduced to another key aspect of the PRPA: the buy-out option. If any cotenant requested a partition by sale, the court will notify the other co-owners that they may buy-out all interests of the cotenant(s) that requested the partition. In other words, the plaintiff, who commenced the partition case and demanded partition by sale, could be bought out, but such plaintiff would be precluded from buying-out the interests of the other owners.

If the co-owner lacks the ability to complete the buy-out, the PRPA mandates that the partition proceed in accordance with the provisions in the existing statutes, but subject to another change in the law. The old partition statute simply required a showing that partition in kind was not equitable. Under the new PRPA, courts are required to consider the following factors in order to determine whether partition in kind will result in great prejudice to the cotenants as a group: (1) whether a partition in kind is practicable; (2) whether the partition in kind would materially diminish the fair market value of the property as a whole; (3) evidence of the collective duration of ownership; (4) a cotenant's sentimental attachment to the property; (5) the lawful use being made of the property; (6) the degree to which the cotenants have contributed their share of property expenses; and (7) any other relevant factor. The court is required to weigh the totality of all relevant factors and circumstances.

Except for the expressly stated changes, nothing in the PRPA overrules or vacates prior statutes or case law on partition actions. For example, the defenses to blocking a partition action, such as the claim of a valid waiver in a right of first refusal, remain viable.

Disputes between cotenants can be difficult. A partition action might be the path to resolution of the dispute, but such actions can be challenging and complex. If you would like to discuss your rights in a partition action, please contact our firm.



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