

Forced Sale of Real Estate in Rhode Island by Court Order With Family Member, Business Partner etc.

By Rhode Island Lawyer David Slepko

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This article by a Rhode Island Lawyer explains how a person who co-owns real estate with another person, persons or entity can force a sale of the property and obtain an equitable share of the proceeds.

A partition case in Rhode Island (RI) is an equitable, legal action in which a person corporation or legal entity can force the sale of real estate against another co-owner or life tenant. Partition cases can be a result of many different types of real property disputes between owners or life tenants or other people with interests in the property as set forth in the Rhode Island statute. A partition case can involve either residential or commercial real estate.

<http://www.slepko.com>- Rhode Island Attorney David Slepko

If a partition lawsuit is filed and there is no defense to the actual partition then the Court will appoint a commissioner to sell the real estate. Please note that there are usually no defenses to the actual partition. A potential defense which is rarely successful is that the property could be divided by meets and bounds. Another possible defense could be that the entity has no legal right to do the partition because they do not qualify under the Rhode Island statute or don't have proper legal title to the property etc. There are other potential defenses that are not set forth in this article.

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In the vast majority of partition cases, there is no way to stop the partition of the property unless there is a settlement. If there is no settlement, the Rhode Island Superior Court will appoint a commissioner to sell the property. In some limited circumstances a partition case can be filed in the Rhode Island Family Court. A Partition Action in the RI Family Court would usually be in the context of a post divorce action involving third party owners or even a divorce involving third parties

When a commissioner is appointed to sell the real estate, the parties lose a lot of control over the sale of the property. A commissioner is an independent Rhode Island Attorney / lawyer appointed by the Superior Court Judge. A commissioner will be very expensive to the parties because the commissioner legal fees will be taken from the proceeds of the sale before the distribution to the parties.

The commissioner may also hire other real estate experts such as a real estate appraiser to do a appraisal of the property. The commissioner may also search title to the property or hire a title examiner to determine if any other parties have an interest in the real estate. The title examiner or commissioner would need to search title at the registry of deeds. If there are title issues concerning the property the commissioner may incur legal fees to resolve the title issues. Other parties with an interest in the real estate may need to be joined as parties. The commissioner will also hire a realtor to list the real estate for sale on the open market. The commissioner will usually agree to pay the realtor the prevailing commission rate. The Realtor will be paid his or her commission at the real estate closing. Either party to the partition lawsuit, the plaintiffs or the defendants may be given an opportunity to purchase the property so long as they are willing to pay the fair market value of the real estate.

In a vast majority of the partition cases a settlement of the case is reached before a commissioner is

appointed. This allows the parties to avoid the expense of the commissioner and avoid other legal fees for the parties lawyers / attorneys. If the case is not settled then the commissioner will sell the property and put the proceeds of the sale into the registry of Court and the parties can then argue as to who is entitled to those proceeds. The commissioner may need to deal with eviction issues or landlord tenant issues related to nonpayment of rent.

After the property is sold by the commissioner the parties have a right to argue as to what interest they have to the proceeds that are being held by the Court. The parties have a right to a hearing / trial on the merits concerning their respective rights to the proceeds. The parties can dispute and argue about issues concerning payment of taxes, assessments, condominium issues, insurance, condominium fees, mortgage payments, payments of the home equity line, payment of lines of credit secured by the real estate, utilities, payment of heat, electric, water, maintenance of the property, upkeep, additions, rent of tenants, remodeling issues, contracts between the parties, payment of condo fees, common maintenance fees, legal fees etc. The Superior Court Judge or potentially a Jury (if applicable) will determine these issues.

Partition cases are often filed in the context of family disputes between family members who are feuding or cannot agree whether or not to sell the property. In some instances the family dispute concerns who is responsible to pay for taxes, insurance, additions, maintenance or upkeep of the property. Sometimes, the parties cannot agree to the reasonable fair market value of the property.

In other instances the family members just hate each other and their animosity leads to vindictiveness and eventually to a partition lawsuit in Court. Many of these feuds are long standing family disputes and issues between brothers and sisters, parents and children, uncles, cousins, or other distant relatives. These cases are particular sad when they involve fathers or mothers feuding with their children (son or daughter)

In some cases, the property is viewed as a valuable family homestead passed down through the generations to one member of the family while the other member of the family wants to sell the property (home) and cash out the equity in the property.

Partition cases also are filed in the context of boyfriends and girlfriends breakups , or significant others who are involved in nasty breakups or even amicable breakups and cannot agree on what share of the proceeds each of the parties will receive upon the sale of the real estate. Partition cases can also be the result of a homosexual / gay relationships terminating. Since Rhode Island does not have gay marriages, gay couples who cannot agree on what to do with the real estate of their domestic partnership may have to file a partition case in Superior Court. Rhode Island Family Court Does not have jurisdiction over these types of disputes.

Partition actions can also be filed in the context of other types of disputes. A Life tenant with a life estate can seek to force the sale of the property against the owner of the property. A life tenant is a person with a deeded life estate with the right to live on the property for the remainder of his or her life. When the life tenant dies the life estate is extinguished. The life tenant can seek a sale of the property and can seek to partition the property.

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Email [Click to contact author](#)
Phone 401-437-1100
Fax 401-433-5066
Address 1481 Wampanoag Trail East Providence RI 02915
City/Town East Providence
State/Province Rhode Island
Zip 02915
Country United States
Link <http://prlog.org/10470785>



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