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Posted On: **July 7, 2008** by [David M. Goldman](#)

Pending Partition of Property does does not Survive Death of Joint Tenant

What happens if you are in the middle of a partition to divide or sell property and one of the owners dies?

The pending action is has no force and effect on the ownership. What does this mean? If you own property as joint tenants with rights of survivorship and you want to partition the property but die in the middle of the court action, the other joint tenant will own the entire property.

A recent 1st DCA case *Mercurio v. Headrick*, WL 2434193 (Fla. 1st DCA Jun 18, 2008) has the expected outcome that all attorney's learn in their first year property course. In addition many other states have reached similar opinions but Florida had not seen this issue before. The Florida Probate Litigation Blog has an in depth article on this case.

What should you do if you find yourself in this situation? You should convey your property to break the joint tenancy with right of survivorship prior to bringing the action. The benefit in doing this is that should you die during the action, your heirs or family will not loose the entire value of the property.

To learn how to do this properly in Florida [Contact a Florida Estate Planning Lawyer](#)

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