

COMPELLING THE SALE OF JOINTLY OWNED HOUSES THE PARTITION SUIT

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As times change, often people buying houses are not the traditional husband and wife couple. Mortgage companies are now usually willing to grant mortgage to boyfriend-girlfriend relationships or gay couples. However, if there is a breakup of relationships, a divorce complaint cannot be filed to compel the sale or division of assets. Instead, a partition suit can be filed in the Superior Court-Chancery Division - General Equity.

The partition suit originated from the English common law. Centuries ago, most property simply were farms. If co-owners could not voluntarily agree on a buy-out, or sole ownership, the Chancellor (an English Judge) could simply order the property/farms divided, or partitioned down the middle. In modern days, houses, condos and most land cannot be divided down the middle. Therefore, in a partition suit, the Superior Court Judge is usually asked to order the house sold and net proceeds divided.

A partition suit is usually started by having your attorney file a verified complaint for partition, signed by both you and the attorney. In addition, an Order to Show Cause is filed. This is a proposed order to be signed by the judge, compelling the defendant / the property owner to appear with their attorney and answer why the court should not award the relief requested with the original complaint. The defendant is also provided with time to file an answer plus counter-claim.

When there are issues other than an equal division of real property, the property owner, through their attorney, may conduct discovery. The three main methods of discovery under the New Jersey court rules are:

- 1) Interrogatories
- 2) Request for documents and
- 3) Deposition-which is live questioning under oath in front of a court reporter.

In partition suits, financial records may have to be produced to the court indicating who paid for household improvements, mortgage payments, taxes, utilities, etc. It is important to keep accurate records. If you don't have records, you will have to recreate records. Partition suits are often similar to divorce cases in which the parties have deep emotional feelings. However, often the bottom line is money. How much will be left after mortgage, taxes and any lien are satisfied is really the main issue.

Partition actions in New Jersey are governed by NJSA 2A:56-1:

2A:56-1. "Cotenant" ; executor or administrator with will annexed; definition and construction

As used in this chapter:

"Court" means the superior court.

"Cotenant" means and includes a tenant in common, joint tenant or coparcener, but not a tenant by the entirety.

An executor or administrator with the will annexed, having, by the terms of the testator's will, power to sell any real estate or any undivided interest in any real estate of which his testator died seized, shall have the same power to bring an action to effect a partition of such real estate as such testator might have brought if living, and cotenant as used in this chapter shall include such an executor or administrator so far as may be requisite for such purposes.

2A:56-2. Partition through sale

The superior court may, in an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein.

2A:56-3. Division of part of real estate and sale of residue

In any action for partition in the superior court, part of the real estate included in the application may be divided and the remainder sold when it appears by the report of the commissioner or commissioners, which shall designate the lands to be divided and those to be sold, and by other satisfactory evidence that the whole of the real estate cannot be divided among the owners and proprietors without great prejudice to their interest.

Court Rule 4:63-1. permits courts to order the Sale of a property.

Rule 4:63-1- Partition; Dower; Curtesy

If in an action for partition or for the admeasurement of dower or curtesy, the court shall be satisfied that a division of the real estate can be made without great prejudice to the owners thereof, it may appoint one or more persons as commissioners to ascertain and report in writing the metes

and bounds of each share; if not so satisfied, it may direct a sale or, in its discretion, if the action is one for dower or curtesy, an assignment from the rents and profits.

Zudiak v Szuryk 93 NJ Eq. 559, 561 (Chan 1922) established the power of the Court to order the sale of land if actual partition cannot be made.

Many counties in New Jersey have set up mediation panels to attempt to help parties resolve issues and avoid trials. The mediators are licensed attorneys volunteering their time to help the superior court. Most cases settle without an expensive lengthy trial. Hopefully, parties can put their emotional feelings aside, cut their court costs and settle without a trial.