Petition to Partition: Your remedy when you jointly own real estate and one owner refuses to sell.

May 25, 2021

Your remedy when you jointly own real estate and one owner refuses to sell.

In Massachusetts, if you own real estate/real property with another and you want to sell and the other party refuses, you are not without legal recourse. Pursuant to Massachusetts law, "any person…who owns a present undivided legal estate in land that is not subject to redemption" is entitled to the equitable remedy of Partition to force a division of the jointly owned property. See, G.L. ch. 241, § 1. As such, the refusing party does not need to agree to the Partition action. A Partition occurs by either (1) a physical division of the property; or (2) a court ordered sale of the property and a division of the proceeds from the sale. As in most instances, a physical divide of the property is impractical or impossible, the Court generally orders the sale of the property via auction or a private sale.

To be eligible for a Partition, the Petitioner (i.e., the person seeking the Partition) must own a legal estate in land, meaning the Petitioner must own the property jointly, as a tenant in common, joint tenant, life tenant or a tenant for a term of years with a minimum of twenty years remaining of his or her term. The statute specifically excludes property held as tenants by the entirety—this is the more common form of ownership for married couples.
Upon the filing of Partition action, the Court will make a determination as to whether the property can be physically divided (generally it cannot) and may appoint a commissioner. A commissioner is an independent third-party appointed by the Court to effectuate the sale of the property in accordance with Court's order. After the sale of the Property, the Court will make a determination as to how the proceeds from the sale should be distributed amongst the owners. Generally, the Court will distribute the proceeds in accordance with each owner's individual ownership interest. The Court, however, may take into consideration each owner's contributions—financial or labor—to the property to ensure that the proceeds are distributed fairly.

Please feel free to contact our office at 508-880-6677 to speak with one of our Estate Plan attorneys today.

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