

HOW TO WIN A PARTITION LAWSUIT

A BEGINNER'S GUIDE



I. INTRODUCTION

This guide is for any non-lawyer who wants to learn more about partition lawsuits. The purpose of this guide is to help people decide if a partition action is right for them, and explain the process for those who decide to file a partition action. While this guide could not possibly address every imaginable situation, and is not legal advice, it is invaluable for anyone in a difficult joint ownership situation.

Foremost, the Underwood Law Firm exists to assist its partition clients go from a messy situation to a new beginning. For everyone wondering what they need to know before filing a partition lawsuit, this guide is for you!



II. THINGS TO KNOW

Like anything in the legal world, there is a lot to know about partition lawsuits. This guide will not answer every possible question. Instead, it will provide an introduction and answer the most commonly asked questions, so you are in the best possible position to decide whether a partition action is right for you.

A. WHO CAN FILE A PARTITION LAWSUIT?

You are not alone in thinking about filing a partition lawsuit. The most common types of partition lawsuits are filed by former boyfriends/girlfriends, brothers and sisters who inherited property together, parents who bought real estate for their children, and partners who invested in real estate together. The Underwood Law Firm represents all of these types of clients.

Under the law, any person who is on title to real estate can file a partition lawsuit. This applies to both joint tenants and tenants in common. There are also some other types of people, such as people inheriting property from title owners who may bring partition lawsuits, but those are special cases and require more specific legal analysis.

The law does not require you to have any reason or justification for filing a partition lawsuit. Generally, people file partition lawsuits because they are not getting along with the other owner or co-owners.

B. WHAT YOU SHOULD KNOW IF YOU ARE A DEFENDANT IN A PARTITION LAWSUIT?

If you are a co-owner of property, and someone has filed a lawsuit against you, the most important thing that you can do is don't wait.

There are many bad things that can happen if you do not respond to a partition lawsuit, such as contempt of court, a default judgment, sanctions, and more.

Basically, if you do not take action when a partition lawsuit has been filed against you, you lose control of the process. You may also lose valuable defenses that could impact your legal rights. Even if you cannot stop the lawsuit, there are so many things that you can do to win with the hand you have been dealt.

C. HOW LONG DOES A PARTITION LAWSUIT TYPICALLY TAKE?

Generally, most lawsuits in California are supposed to take up to two years, or more! Like any other lawsuits, a partition lawsuit can also take this long, and often do with most other real estate lawyers.

When you hire a knowledgeable partition lawyer, the process can take as little as 6 months or less if nothing else is involved. As the saying goes, time is money, and this is even more true in litigation where legal fees are an important consideration. As such, an experienced partition lawyer can save you money in the long run.

III. THE PROCESS

A. WHAT DOES A PARTITION LAWSUIT LOOK LIKE ?

Under the law, there are certain critical things that must be included in a partition. For example, the lawsuit must include a legal description of the real estate at issue, a statement of each party's interest in the real estate, and reasons why the property should be sold instead of physically divided when that partition method is requested. If any of those items are missing from the complaint, the lawsuit may be subject to a motion to dismiss called a "demurrer."

For those persons looking to file such a partition lawsuit themselves without a lawyer, a good example is on our website under forms.



B. WHAT DOES AN ANSWER IN A PARTITION LAWSUIT LOOK LIKE?

On the other hand, there are different legal requirements in an answer to partition lawsuit filed with the court. Like a partition complaint, an answer in a partition lawsuit must contain a description of the sued party's interest in the real estate, and any potential defenses to the lawsuit moving forward. If any of those items are missing from the answer, then the Answer may be subject to its own motion to dismiss called a "demurrer."

For those persons looking to file such an answer to a partition lawsuit themselves without a lawyer, a good example is on our website under forms.

C. WHAT ARE THE STEPS IN A PARTITION LAWSUIT?

There are a number of steps in a partition lawsuit. The big steps are the filing of the lawsuit, the answer to the lawsuit, the appointment of a partition referee, the accounting of credits and debits, the partition sale, and the final judgment. For the non-lawyer looking to learn more, however, an experienced partition lawyer can give you all the detailed information you need on the process.

IV. TIPS AND TRICKS

A. SECURE YOUR RIGHTS—FILE A LIS PENDENS

As a partition lawsuit leads to a sale of the property, one of the most important early steps is to record notice of the lawsuit with the County where the real estate is located and properly serve it on the parties to the lawsuit. This “notice of lawsuit” is known in the legal world as a “lis pendens.” In order to make sure that the lawsuit is effective, it should be filed and served at the earliest opportunity.

B. DON'T WAIT—ANSWER THE COMPLAINT

There are many important things to do in a lawsuit, but for someone who is sued in a partition lawsuit, called a “defendant,” perhaps the most important thing is to actually answer the lawsuit after it is filed. If this is not done, then no other claims may be considered.

C. COLLECT YOUR EXPENSES

In any partition action, a property owner may have a right to any amounts expended above their share of their interest in the Property. For example, if one person owns 50% of the property, but pays 100% of the property taxes for the year, then they would generally have a right to reimbursement for the remaining 50% of those taxes for that year as part of the partition action. Thus, before the lawsuit starts, it is valuable to collect all of the amounts that you have paid for the property, and all supporting documentation, so you are prepared for the lawsuit.

V. FIVE STEPS TO WINNING A PARTITION LAWSUIT

A. TRY TO GET NEGOTIATE FIRST.

One of the best ways to “win” a lawsuit is not to go through the legal process in the first place. Sometimes litigation is the only available option, and thus necessary. Before you file a lawsuit, however, we encourage everyone thinking about it to at least attempt to discuss the matter with the other parties to see if some arrangement is possible. Even if this is unsuccessful, at the very least you will know that you did everything you could to avoid it but had no other choice, so you feel you are doing the right thing.

B. ALLEGE YOUR INTERESTS.

The law requires everyone in a partition lawsuit, both the party who filed the lawsuit and the party responding to the lawsuit, to state how much of the property you own. Absent such an allegation, it will be more difficult, expensive, and time-consuming for the court to sort through each party's rights and responsibilities. By alleging all valid rights, you will put yourself in the best position to “win” the partition lawsuit.

C. GET PRE-APPROVED FOR A RE-FINANCE BEFORE THE LAWSUIT

One resolution of many partition lawsuits involves buying the other parties' interests through re-financing the property. In order to ensure that you are prepared to make this an option later down the road, it is better to begin the pre-approval process before it is necessary to ensure that everything proceeds smoothly, so you can have another avenue to “win” the partition lawsuit.

D. ASSERT ALL VALID CLAIMS FOR SET OFF

In all partition lawsuits, the court will determine all parties' interests and make adjustments for contributions to the property beyond each party's interests. Again, if there are two parties who each own the property 50/50, and one party pays all of the costs for the property while the other contributes nothing, then ensuring all valid claims are asserted could result in one party receiving the majority or most of the money from the ultimate sale. Indeed, the assertion of all valid claims for set-off could lead to a better result earlier, thus leading to a "win" in the partition lawsuit.

E. SEEK YOUR ATTORNEYS' FEES AND COSTS

In a partition lawsuit, the court can award fees and costs in accordance with the principles of equity. In some instances, the court may be able to provide you with reimbursement of your attorneys' fees and costs by taking them out of the other parties' proceeds from the sale. As such, through recovering the money spent from the lawsuit, you will be able to notch a "win" in the partition lawsuit.

VI. Contact an Experienced Partition Lawyer

If you find yourself contemplating a partition action, or faced with defending one, then please contact the Underwood Law Firm for a free initial consultation at info@underwood.law, 916.318.8000, 510.519.9000, or 949.347.5000.

