



The Board-Certified Attorney’s Explanation of the Uniform Partition of Heirs Property Act; Recommendations to Use Joint Tenancy Agreements

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II. Uniform Partition of Heirs Property Act F.S. 64.201 et seq.

A few years back I published my article on partition titled “The Board-Certified Attorney’s Explanation of Partition and Solutions to Joint Tenant Disputes.” The Florida Legislature has modified the original Partition Statute by adding Part II titled: Uniform Partition of Heirs Property Act. § 64.201 through 64.214. There has been a change in the law, and we are starting to get quite a bit of inquiries relating to this format. Specifically, this is the secondary chapter to the Uniform Partition Act applicable to all actions in which one of the cotenants acquired title from a relative and there is no prior written agreement that binds all the cotenants.

On that particular point, the specific definition making this applicable is set forth in FS § 64.202 (6) which indicate that if any of the cotenants receive their property via a will or by intestacy (prior owner dying and conveying this by descent and distribution under Florida law), then in such event, this new section of the partition statute applies. Overall and, in general, the new statute requires court-ordered appraisals providing the right of first refusal for other heirs to buy out the person seeking the sale. Essentially, the Florida State legislature has adopted a similar approach that I have suggested in my previous article, which is the effort to get a co-tenant buyout rather than the forced sale format under Chapter I.

Encouraging open market sales and negotiations between cotenants rather than the forced sale by way of partition with the attendant costs ideally will result in a fairer and more equitable distribution to each co-tenant vs. the forced sale method of Chapter I. Under the new statute, the Court must:

- (a) Order an appraisal of the property;
- (b) Notify all co-owners;
- (c) Offer co-owners a right of first refusal to buy the interest of anyone seeking a sale;
- (d) If no buyout happens then, in such an event, the parties will consider a specific partition in kind, which is highly unlikely; or

- (e) If it is not feasible and generally, it is very rare that property can be partitioned absent a large tract of land, then, in such event, the court orders a fair market sale rather than an auction sale.

The goal of FS 64.206, as set forth in the last paragraph of the statute, is to give the Court some additional equitable guidance to adjust the cot-tenant's share as follows:

“In addition to a determination of value under this section, the court shall determine the amount of the equitable accounting upon the request of any cotenant and shall appropriately adjust any price, purchase price, apportioned price, buyout, judgment or partition granted under this part based on the results of the equitable accounting.”

Fundamentally, the goal of the Florida Legislature in passing the new Chapter II to Florida Statute 64, “The Uniform Partition of Heirs Property Act” is to create a more equitable situation, even the playing field and prevent the forced sale of inherited family property at below-market prices. It is the opinion of this author that the intent was to protect family wealth by introducing mandatory appraisals, giving co-heirs the right to buy out those wanting to sell, and preferring open-market sales over forced auctions.

The key features of the Uniform Partition of Heirs Property Act are summarized as follows:

- A. The Act protects against situation where one co-owner (often an outside investor) forces a sale of inherited property through a court auction, which usually brings lower prices.
- B. Before a court orders a sale, it must determine the fair market value of the property through a professional appraisal, establishing a fair price floor.
- C. Co-heirs who wish to keep the property are given the first opportunity to buy out the shares of co-tenants who want to sell at the fair market value.
- D. If a buyout doesn't occur, the Act mandates that the property be sold on the open market, using a licensed broker, to maximize value rather than a courthouse auction.
- E. The final provision as identified above is that Courts are required to consider factors like the family's history with the property, sentimental value, and contributions made by family members towards the property.

Recommendations for Written Joint Tenancy Agreements

In any situation in which you are planning to own property, it would be fundamental to try to have a written agreement between the parties on how the property would be disposed prior to taking title. Clearly, in a situation involving inheritance property, that is usually not possible, but all the cotenants should strive to have some type of written agreement to have in place to govern their affairs after they acquire title.

In situations involving purchase of real property that is not “heirs property” the parties should try to have in place a straightforward but legally enforceable agreement to avoid litigation, such as partition.

That agreement would be a written Joint Tenancy Agreement drafted up by competent legal counsel, which identifies the fact that the parties have in place a manner and method in which they would be willing to sell the property and divide up the proceeds, or, alternatively, an approach allowing one of the tenants to buy out the other at an agreed-upon price based upon a certain objective appraisal formula.

This advanced planning and written Joint Tenancy Agreement can save the cotenants a significant amount of attorney fees later as well as the aggravation of having to engage in contested negotiations, or worse yet, litigation with related parties over property that one or more of the parties had inherited.

The Law Office of Jursinski and Murphy provide services both to handle litigation partition actions in a fair and equitable manner, as well as to represent heirs properties under the new section of the statute.

As importantly and as a planning mechanism, we also offer transactional services to prepare documentation for parties entering contracts to purchase or taking title in which the parties are holding property as tenants in common or hold title as joint tenants with the right of survivorship. Note: Joint tenancies with the right of survivorship can still nonetheless be severed to create a tenancy in common.

A key point is that if there is a written Joint Tenancy Agreement in place as to the title and correspondingly, there should be in place some type of format or procedure of how the property is ultimately disposed of with built in options for the tenants in common to buy out the remaining counterpart tenants or tenants in common.

All these points should be strongly considered and reduced in writing to a legally enforceable document to protect the rights of all parties holding title to the real property.

The Law Office of Jursinski and Murphy can assist in addressing all these issues.

Disclaimer as to legal advice

Please consider the above article as a general discussion of issues surrounding holding title to real property. This article is written for informational purposes only and should not be relied on as legal advice. For specific advice surrounding your property, seek the proper legal counsel.