LAW OFFICE OF

JURSINSKI & MURPHY

FLORIDA'S PARTITION ACTION:

"THE REAL ESTATE DIVORCE"



Presented by:

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Seminar Agenda

1. 

Overview of Florida statute Chapter 64 and the partition process

2. 

Part I: The "Legal Approach"; litigation, special magistrate, evidentiary hearings, associated costs

3. 

Part II: The "Pragmatic Approach"; negotiated resolution, buyouts, and mediated settlements

4. 

Equitable Accounting: credits, mortgage principal vs. interest, fair rental value, repairs

5. 

The critical (and often overlooked) issue: above-the-line treatment of principal reduction payments

6. 

Recommendations: pre-purchase Joint Tenancy Agreements and strategies to avoid litigation

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Florida's Partition Act – Chapter 64

- Statutory remedy for property co-ownership disputes
- Legal process when co-owners can no longer agree on what to do with the property
- Resembles a marital breakup involving real estate
- A path to divide, sell, or otherwise resolve jointly owned property

The Typical Partition Scenario



The Typical Partition Scenario

- The Purchase is Informal
- Rarely do parties execute a comprehensive Joint Tenancy Agreement or Co-Ownership Agreement.

Disputes arise over:

Who pays for what
(repairs, taxes, insurance, mortgage)

Who gets use of the property
(and when)

Whether to sell or hold

One co-tenant not pulling their financial weight



Partition Disputes Often Resemble Divorce Litigation

- Former Friends/Lovers/Family Members
- Attorney Fees incurred due to finite equity
- Emotions
- Contentious as divorce litigation

Florida Law: Duties and Obligations of Co-tenants

Generally, each co-tenant share all expenses in properties ownership.



Why This Matters

- Partition actions are growing in frequency.
- Clients often seek guidance only after relationships have deteriorated, sometimes beyond repair.
- They need practical and cost-effective solutions



Overview of Partition Under Florida Statute Chapter 64

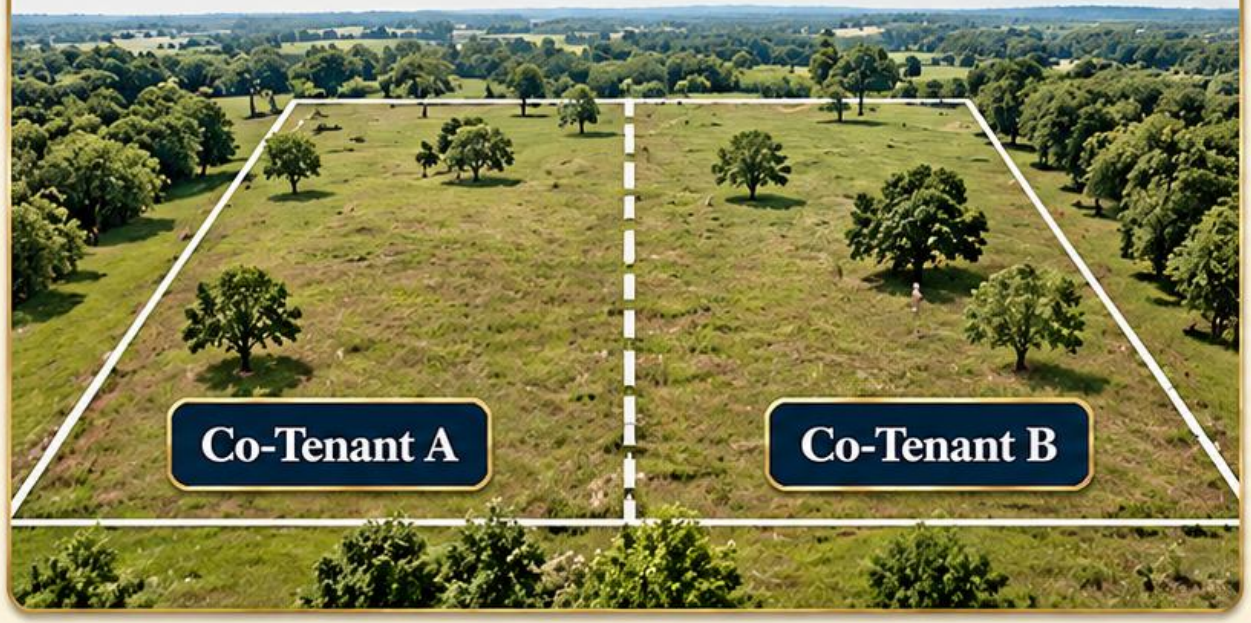
What is Partition?

- Statutory cause of action allowing any co-tenant to force the division or sale of jointly owned property
- **Based on Old English Law**: When property owners disputed their interest, the King sent a representative to divide the land or settle the dispute. Today, the court performs that function.
- **Partition is a matter of right**. If a co-tenant wants out and no enforceable restriction exists, the court will grant partition.

Two Forms of Partition

1 Partition in Kind

Physical division of the property (**rare;** generally limited to divisible raw land). May require **expert input** to determine whether the property can be equitably divided.



2 Partition by Sale

Court-ordered sale with net proceeds distributed to co-tenants according to ownership interests and equitable adjustments.



Restrictions On Partitions

- Provision is generally enforceable if for a reasonable and definite period.
- Even joint tenancy with right of survivorship is subject to partition, though the right may be waived.

Homestead Considerations

- Article X, Section 4 of the Florida Constitution generally prohibits partition of homestead property.
- **Exception:** Partition may be permitted among beneficiaries of a homestead upon the owner's death.

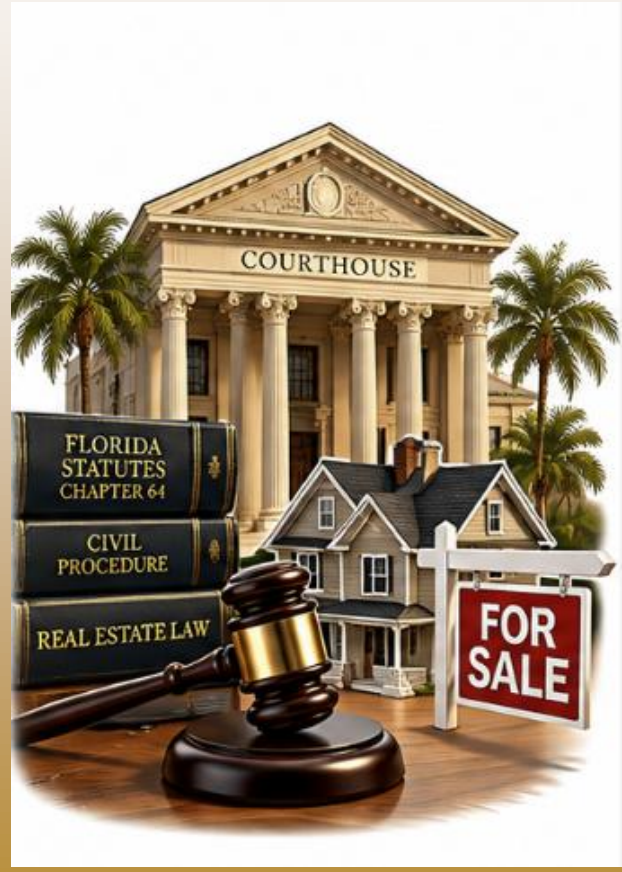
Tullis v. Tullis, 342 So. 2d 88 (Fla. 1st DCA 1977)

Part I

The Legal Approach: Litigation and the Partition Process

Filing A Partition Action:

Any co-tenant may petition the court under Chapter 64 to appoint a special magistrate/commissioner and order sale of the property.



The Legal Approach: Litigation and the Partition Process



Court in equity has broad authority to fashion remedies:

- Appointment of Special Magistrate;
- Listing the property through a licensed Florida real estate broker;
- Judicial sale by public auction
- Private sale between the parties, pursuant to written agreement

(the preferred outcome)

Appointment and Role of the Special Magistrate/Commissioner

- The special magistrate may be an attorney, layperson, or licensed real estate broker.
- Duties include:
  - Listing the property at fair market value
  - Negotiating and executing contracts on behalf of non-consenting co-tenants
  - Overseeing closing and distribution of proceeds
- Real estate broker commission: Typically, 5% to 6% for residential property; market rates for commercial or raw land.
- Typical closing costs (documentary stamps, title insurance, closing fees): Approximately 1.5% to 2% of sale price.

The Accounting and Evidentiary Hearing

Once the property is sold, the real battle often begins:

- **Disputed Credits**
- **Rental Income**
- **Exclusive Use**

If the parties cannot agree on the distribution of net proceeds, the court will:

1. Order proceeds held in escrow.
2. Require full accounting.
3. Conduct and evidentiary hearing.
4. Adjudicate credits.



This stage is the most cumbersome and expensive part of the partition litigation.

What Florida Statute §64.081 Means

- Both sides incur attorneys' fees.
- Both sides may seek recovery from the other, determined on “equitable principles.”
- Fees are allocated proportionately to each party's interest and benefit received.
- Generally, fees offset each other, but the statute creates additional cost and complexity.

Mediation

- Courts typically order mediation.
- Often results in settlement once parties confront the true cost of litigation.



The Cost Cascade

Imagine two 50/50 cotenants disputing a property:

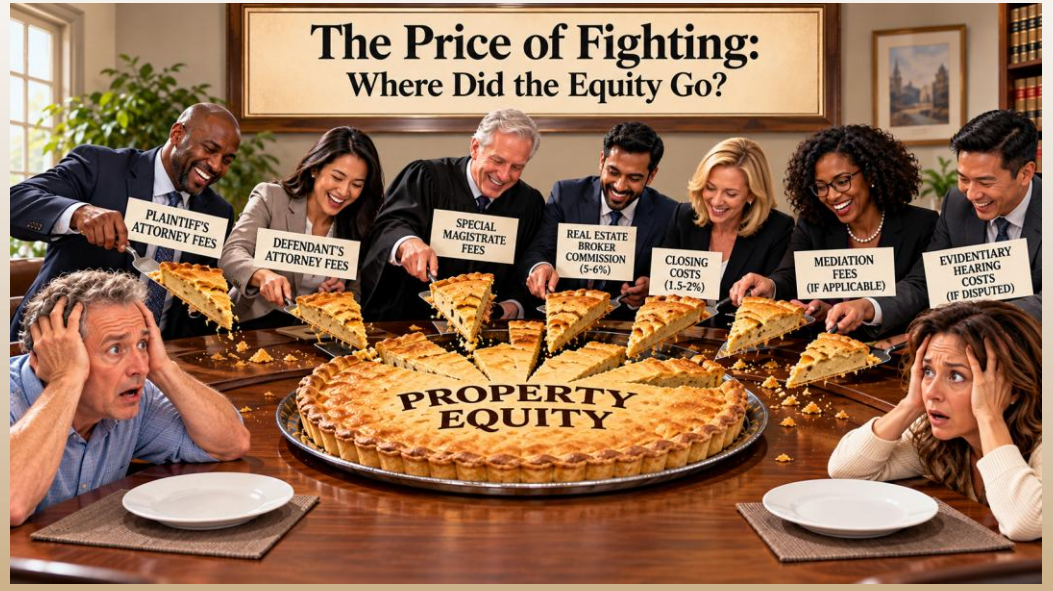
- Owner A initiates partition.
- Owner B retains counsel and responds.
- Court appoints special magistrate.
- Magistrate lists property, negotiates contract, supervises closing.



The Price of Fighting: Where Did the Equity Go?
Every Real Property Has a Finite Value

- Plaintiff's attorney fees
- Defendant's attorney fees
- Special magistrate fees
- Real estate broker commission (5-6%)
- Closing costs (1.5-2%)
- Mediation fees (if applicable)
- Evidentiary hearing costs

  (if accounting disputed)



These costs are deducted from net proceeds *before* distribution to the parties.

Part II:

The Pragmatic Approach: Avoiding the Litigation Trap

Why the Pragmatic Approach Works:

- Threat of a partition action often brings reluctant cotenants to the negotiating table.
- ***The Reality***: A forced partition sale can attract savvy buyers seeking a bargain, while substantial legal fees and costs further reduce the co-owners' net recovery.
- FINITE EQUITY
- Once cotenants understand the expense, most are willing to explore alternatives.

The Pragmatic Alternatives

Recent case law expressly endorses negotiated private resolution:

***Marks v. Stein*, 160 So. 3d 502, 503 (Fla. 2d DCA 2015):**

> "The procedure of allowing the parties to negotiate a settlement between them, perhaps with one joint tenant buying the other joint tenant's interest, affords the parties a fixed reasonable time within which to make a voluntary sale of all or part of such property for cooperative maximization of the sales price...Although the courts have developed this third remedy in the context of dissolution proceedings; its use is not limited to marital disputes."

The Practical Options

1. **One Co-tenant Buys Out the Other:** Negotiate a fair price for the departing cotenant's interest, potentially at a premium over what they would net after a forced sale.
2. **List the Property for Sale Immediately:** Agree to list with a broker, split proceeds according to ownership and credits, and avoid court costs and special magistrate fees.
3. **Pre-Suit Mediation:** Engage a mediator before filing litigation to structure a buyout or sale.

Counselor vs. Litigator

LITIGATOR



- Focus on winning arguments
- Prolongs the dispute
- Higher costs
- Emotions escalate
- Equity erodes

VS.

COUNSELOR



- Manages emotions
- Focus on practical solutions
- Explains the finite asset concept
- Promotes buyouts and settlements
- Preserves equity for the client

Know When to Negotiate and When to Litigate



The Financial Benefits: Keep the Equity, Not the Legal Bills!

- Court costs
- Special magistrate fees
- Substantial attorneys' fees
- Evidentiary hearing costs




The Financial Benefits:
Keep the Equity, Not the Legal Bills!
SETTLEMENT
SAVED TIME
SAVED MONEY
PRESERVED EQUITY
A BRIGHTER FUTURE
$
OUR SHARE
$
OUR SHARE
COURTHOUSE
COURT COSTS
SPECIAL MAGISTRATE FEES
ATTORNEYS' FEES
EVIDENTIARY HEARING COSTS
DEPOSITIONS
EXPERTS
MOTIONS
BRIEFS
STILL LITIGATING
...
Bottom Line: Both parties end up in a better financial position than if partition litigation proceeds to judgment.

Often the Key Contested Issue:
Shared Ownership, Shared Expenses: Who Pays What?



Proportionate Sharing of Expenses

Cotenants share a mutual obligation to pay carrying costs in proportion to their ownership interests:

- Mortgage payments (interest and principal)
- Property taxes
- Insurance
- Necessary repairs and maintenance
- Utilities
- HOA/condo assessments

You Paid My Share? I Owe You Credit!

- A cotenant who pays more than their proportionate share is entitled to a credit from net sale proceeds for the non-paying cotenant's share of those expenses.
- This right arises by operation of law — no agreement is required.



The Credit Formula:
Fair Shares, Fair Reimbursement

The typical credit formula for ordinary carrying costs:

- The paying cotenant receives their ownership percentage of the net proceeds, *plus*
- A credit equal to the non-paying cotenant's proportionate share of joint expenses paid by the paying cotenant.

Example: 50/50 Ownership	
Net proceeds from sale	$100,000
Unpaid joint expenses by Owner B *(paid by Owner A)*	$10,000

	Calculation	Amount Received
Owner A	(50% × $100,000) + $10,000	**$60,000**
Owner B	(50% × $100,000) − $10,000	**$40,000**



The Inequity of a 50% Credit for Principal Reduction

Here's where it gets interesting (and expensive if you get it wrong).

Ordinary Carrying Costs vs. Principal Reduction

- **Ordinary Carrying Costs (mortgage interest, taxes, insurance, utilities, routine repairs)**: Recurring obligations necessary to preserve the property. Do not create new equity; they merely prevent loss.
- **Principal Reduction Payments**: Directly reduce the outstanding mortgage balance, increase the owners' equity dollar-for-dollar, and increase net sale proceeds when the property is sold and the reduced mortgage is paid off.
- **Capital Improvement**: Creates equity.

Co-Tenant Obligations:
Shared Expenses and Exclusive Use

Co-tenants share a mutual obligation to pay their proportionate share of core expenses, but the rules change dynamically when one owner has exclusive use of the property.

Allocation of Expenses

- The occupying tenant does not automatically have to pay the full amount of property expenses.

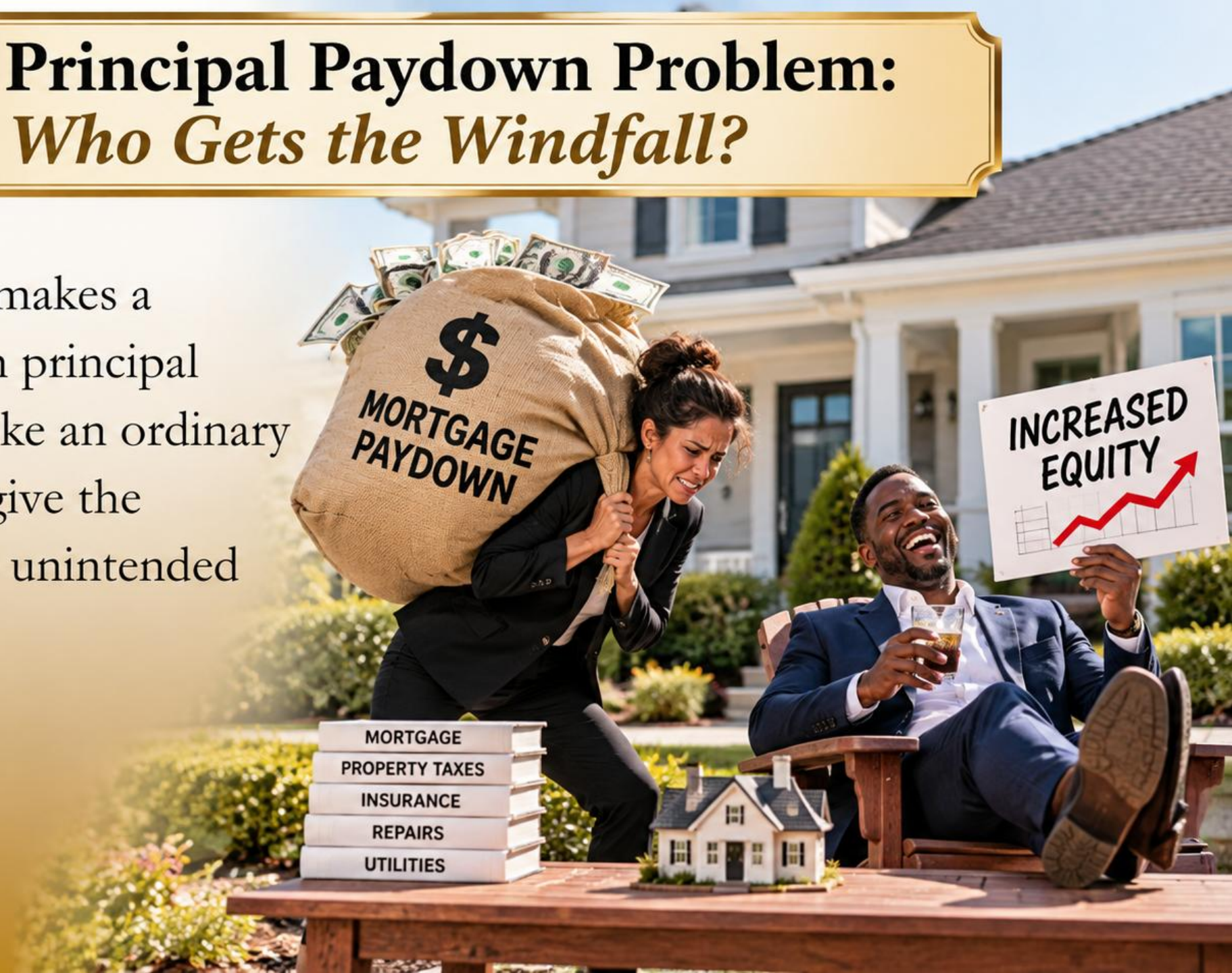
- By default, all co-tenants must contribute to "necessary expenses" required to preserve the property based on their percentage of ownership

Preservation Expenses and Co-Tenant Contribution Credits

- Essential preservation costs include:
  - Mortgage payments
  - Property taxes
  - Homeowners insurance
  - Necessary repairs
- Occupying tenant can pay these expenses directly to protect the property and later seek a contribution credit from the non-occupying.

The Principal Paydown Problem:
Who Gets the Windfall?

When one co-owner makes a substantial lump-sum principal payment, treating it like an ordinary shared expense may give the non-paying owner an unintended financial windfall.



The $400,000 Question: Who Gets the Credit?

HYPOTHETICAL: Owner A pays $400,000 toward mortgage principal. The property is then sold, and the reduced mortgage is paid off.

50% CREDIT METHOD

Owner A receives:

50% of net equity + $200,000

Owner B receives:

50% of net equity − $200,000

PROPOSED FULL REIMBURSEMENT

Owner A first receives:

$400,000 reimbursement

Then:

Remaining equity is split 50/50

KEY POINT: A principal paydown increases equity. The dispute is how that contribution should be credited.

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The $400,000 Paydown: Follow the Money!

ILLUSTRATIVE HYPOTHETICAL | 50/50 CO-OWNERSHIP

1 BEFORE PAYDOWN

Original Mortgage Balance



Mortgage Balance
$1,500,000

2 PARTY A PAYS

Lump-Sum Principal Reduction



Party A Payment
$400,000
Applied to principal

3 AFTER PAYDOWN

Reduced Mortgage Balance



Mortgage Balance
$1,100,000

4 EQUITY CREATED AT SALE

$2,000,000
Sale Price

—

$1,100,000
Mortgage Payoff

=

$900,000
Equity Available to Divide
(before sale costs and other credits)

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Impact of Party A's $400,000 Principal Reduction

1

Property Sale Price



$2,000,000

2

Original Mortgage Balance



$1,500,000

3

Party A's Principal Payment



$400,000

Applied to reduce mortgage principal

4

Reduced Mortgage Balance



$1,100,000

($400,000 paydown)

5

Equity Available to Divide



$900,000

(before sale costs and other credits)

EQUITY CALCULATION

$2,000,000
Sale Price

—

$1,100,000
Mortgage Payoff

=

$900,000
Equity Available to Divide
(before sale costs and other credits)

Current Equity	Equity without Pay Down
$900,000	**$500,000**

Typical Equal Division of Net Equity

1 **Sale Price**

$2,000,000



2 **Mortgage Balance**

$1,100,000



3 **Net Equity to Divide**

$900,000



50/50 Division of Net Equity

Party A

Party A Receives

$450,000

(50% of $900,000)

Party B Receives

$450,000

(50% of $900,000)

Party B

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The Legal Foundation

Rutkin v. Rutkin, 345 So. 2d 400, 402 (Fla. 3d DCA 1977)



"The husband has subsequently made the mortgage payments on the marital home and is entitled to a credit of $3,486.40 for the mortgage principal reduction allocable to the wife's interest. This credit should have been charged against the wife's one-half share in the proceeds from the sale of the home, not against the total proceeds of the sale since such total proceeds represent in part the husband's own share of the monies earned from the sale."

Translation: What the Case Means

- A principal reduction creates equity in the property. ← by an Above the line deduction
- That equity benefits both parties, unless an adjustment is made.
- The equitable adjustment is to credit the paying co-tenant before dividing net proceeds.

Equity Principles

(Partition is an Equitable Cause of Action – These Principles Apply)

Florida Law Prohibits Unjust Enrichment



"The equity of one party should not be increased by expenditures made by another."

Biondo v. Powers, 743 So. 2d 161, 164 (Fla. 4th DCA 1999).



What This Means for Co-Tenants

When one co-tenant creates equity through a principal reduction payment, the non-paying co-tenant cannot receive that equity without compensation.

KEY POINT

Florida law protects against unjust enrichment and requires an equitable credit for a co-tenant's principal reduction payment.

At Closing

At Closing
(Illustrative; before transaction costs)



Gross sale proceeds:
$2,000,000



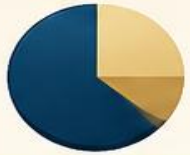
Original mortgage balance:
$1,500,000



Owner A's principal reduction payment:
$400,000



Mortgage after payment:
$1,100,000



Equity available before other costs:
$900,000

Impact of Owner A's Principal Payment



KEY POINT

Owner A's $400,000 principal reduction increases the total equity available to divide—from $500,000 to $900,000.

Owner A must recapture!

Wrong Distribution

Illustration: Ordinary 50/50 Division Without Reimbursement

- Owner A: **$450,000**
- Owner B: **$450,000**

This ignores Owner A's **$400,000** separate principal contribution and gives Owner B the benefit of **$200,000** of equity created by Owner A.

What Happens Under the Wrong Distribution?

Total Equity
$900,000



50/50 Division

Owner A
$450,000

Owner B
$450,000



KEY POINT

A simple 50/50 division without reimbursement ignores Owner A's **$400,000** principal payment and improperly gives Owner B the benefit of **$200,000** of additional equity created by Owner A.

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Dollar-for-Dollar Above the Line Credit

The Correct Distribution

1 Calculate Equity Before Principal Paydown



Sale price:	$2,000,000
Less: Original mortgage:	($1,500,000)
Original equity:	**$500,000**

2 Owner A's Principal Paydown *(Dollar-for-Dollar)*



Owner A's principal paydown:

$400,000

Mortgage balance reduced from $1,500,000 to $1,100,000.

3 Determine Equity After Principal Paydown



Equity after paydown:

$2,000,000 – $1,100,000 =

$900,000

4 Divide Remaining Equity Equally (50/50)



Remaining equity after reimbursement:

$900,000 – $400,000 = **$500,000**

Divide $500,000 equally:

$250,000 each

Final Distribution

Owner A:

$4000,000 reimbursement
+ $250,000 share of remaining equity

$650,000

Owner B:

$250,000 share of remaining equity

$250,000

RESULT
Simplified $400,000 Example

Owner A
(Includes Return of $400,000 Contribution)



Share of remaining equity:	$250,000
Return of principal contribution:	$400,000
Total to Owner A:	**$650,000**

Total Equity Available for Distribution

$900,000



Owner B



Share of remaining equity:	$250,000
Total to Owner B:	**$250,000**

Repairs and Maintenance

- **Necessary repairs:** Cotenants share the obligation to maintain the property. A cotenant who pays for necessary repairs (roof replacement, HVAC repair, structural work) is entitled to credit for the non-paying cotenant's share.

- **Improvements:** A cotenant who makes improvements that increase property value is entitled to credit for the enhancement in value (not necessarily cost).
  Hernandez v. Hernandez, 645 So. 2d 171, 175 (Fla. 3d DCA 1994).

Practical Tip

- ✓ **Document everything**:
  - Receipts for repairs, mortgage payments, tax payments, insurance premiums
  - Records of rental income received (and how it was allocated)
  - Evidence of exclusive use/possession (utility bills, occupancy records)
- ✓ The **evidentiary hearing** will require proof of every claimed credit.



Joint Tenancy Agreements and Succession Planning

The Problem:

Most co-purchasers do not execute a comprehensive Joint Tenancy Agreement or Co-Ownership Agreement before buying property together.



KEY POINT ›

A clear Joint Tenancy Agreement or Co-Ownership Agreement should be in place **before buying property together.**

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What a Good Agreement Should Address

1 Rental Income

How rental proceeds are divided.



2 Death of a Cotenant

Buyout rights for a surviving cotenant; prevents forced sale by heirs or successors.

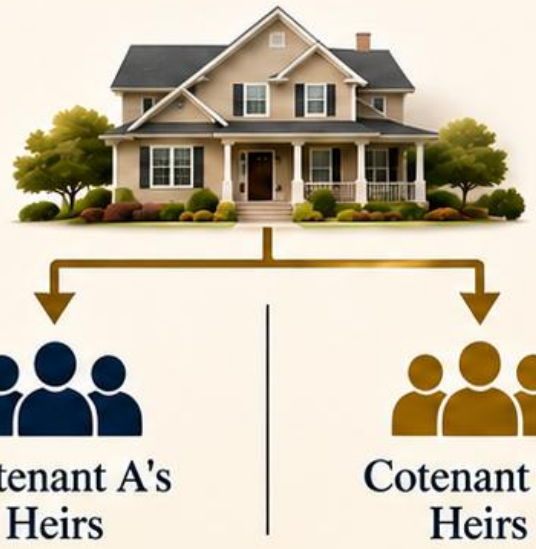


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Succession Planning

If cotenants hold property as tenants in common (not joint tenancy with right of survivorship):

1 Each Cotenant's Interest Passes to Their Heirs



2 Risk of Partition Litigation



3 Solution: Joint Tenancy Agreement with Buyout Option



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Chapter 64, Part II: Heirs Property

Florida has enacted the Uniform Partition of Heirs Property Act (Fla. Stat. §§ 64.201–64.230), which provides special protections and procedures for property held by family members as heirs. **(*Article in pamphlet*)**

The Market Reality and Practical Resolution

Market Realities:

- **In a Rising Market:** Co-tenants may disagree on timing, one wants to sell now, the other wants to hold for further appreciation.
- **In a Declining Market**: One cotenant may want to cut losses while the other hopes for recovery.
- **Partition litigation** can take months or years during which property values may shift significantly.
- **Monthly appreciation vs. Monthly carry costs** (+ litigation costs)

Summary

The Pragmatic Path Forward

1. 

Evaluate the Equity

2. 

Identify All Credits

3. 

Recognize Above-The-Line Treatment for Principal Reduction

4. 

Explore Buyout or Negotiated Sale

5. 

Use Pre-Suit Mediation

6. 

Draft a Joint-Tenancy Agreement

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Final Thought

- The best partition action is the one you never have to file.
- Draft a Joint Tenancy Agreement on the front end.
- If litigation becomes unavoidable, pursue the Pragmatic Approach.
- ***Always***: treat principal reduction payments and equity enhancing contributions as above-the-line credits.

Thank You

Questions?

