

PARTITIONING PROPERTY

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Lately, I've been involved in three partition actions, two of which involve the administration of an estate. A partition action can be an expensive alternative to selling real or personal property when the parties having ownership of such property can't agree on how to handle it. There are two forms of partition, an estate administration and a Chapter 64, Fla. Statute version. As it stands now, the outcome of an estate administration partition case is no different than a Chapter 64, Florida Statute proceeding except for costs and procedures.

A partition action is a Court ordered judgment forcing the sale of property (real or personal) owned by one or more owners who have a possessory interest in the subject property. This typically occurs when the parties with the possessory interest can't seem to agree on what to do with the property. In estate administration cases it almost always involves family members who can't get along or are unable to communicate in a civil manner about what to do with mom and dad's home following their deaths.

What eventually happens, whether in an estate administration or general partition action, is the filing of a lawsuit requesting the court step in and force the sale of the subject property. This is done when one or more of the parties seeking relief requests the court to partition (sell - auction) the property on the courthouse steps. The sad part of all of this is the amount of dollars recovered from the sale which runs close to 50 cents on the dollar.

The difference in the procedures for each depends on the whether it is being done in an estate administration or general partition. In an estate administration, the personal representative or any beneficiary of the estate may request the probate court to partition (sell) the property. This request must be done before the estate has closed. The court can then direct the personal representative to sell the property provided it does not prejudice any particular party to the estate and it is not the decedent's homestead property. The unique difference between an estate administration and general partition is the contradiction in the language found in Chapter 64, Fla. Statutes. The contradiction is the Court's appointment of a commission in a general partition versus the personal representative given authority to sell the property without a commission by the probate Court.

If a personal representative is able to sell the property at the direction of the court, the estate beneficiaries' interest is protected because the highest economic gain can be obtained without resorting to an auction on the courthouse steps. In addition, the costs to perform this function becomes an expense of the estate and not from the personal pockets of the beneficiaries.

In Chapter 64, Fla. Statutes, the partition action requires a finding by the Court that the subject property cannot be equally divided between the parties. This usually occurs because there is a house sitting on the property which cannot be divided; by the same token, neither can a car be cut in half to give equal shares to disputing parties. When this is determined by the court,

the Judge will appoint 3 persons to act as commissioners. The commissioners are responsible for determining how (if at all) the property can be divided so that each party receives an equal distribution. If it is determined the property is indivisible, a report is prepared and delivered to the court who will prepare a judgment ordering the sale of the property and the division of the proceeds. The court will then order the property be sold at auction (courthouse steps) or by the commissioners.

In Chapter 64, Fla. Statutes, the costs of the 3 commissioners and any surveyors used along with attorney fees for each party is paid from the sale proceeds of the partition. Remember that the sale will occur on the courthouse steps or by the commissioners. If the sale is by the commissioners, they will be entitled to a commission (like a real estate agent) on the sale.

So how can a partition action be avoided? The manner in which a partition action can be avoided is through agreement between the parties who possess an interest in the property. This can be accomplished either by written agreement or a statement contained on the deed to the property itself stating that the property is not eligible to be partitioned.

So which procedure is better, an estate administration or a general partition? In the author's opinion, an estate administration is better because it is less costly and there is no need for a set of commissioners to be appointed by the court. However, remember that if the property is determined to be homestead, it must proceed under the procedures of Chapter 64, Fla. Statutes.

If you are in an estate administration and the ability to decide what to do with real property arises because of dissent among the beneficiaries, talk to the attorney of your choice about the estate's situation and decide on a strategy to avoid the infighting.

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