

Kimball, Tirey & St. John LLP

Property Co-Ownership Disputes

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When property is owned by more than one owner, and the owners disagree, how is the parties' dispute resolved?

Disputes between co-owners may involve any of the following issues (or others):

- One owner has sole possession of the property but refuses to pay rent or otherwise compensate the owner who is not in possession;
- One owner refuses to pay his or her share of the property expenses;
- The owners disagree regarding management issues; or
- The co-owners can't agree about how to handle the property in the future (e.g. whether to continue to hold it for investment or to sell it, or whether the property should be improved).

In these situations, property owners often contact Kimball, Tirey & St. John LLP attorneys for advice.

If the parties formalized their agreement regarding the property when they bought it (whether in the form of an LLC's operating agreement, a partnership agreement, a tenancy in common agreement, a corporate buy-sell agreement, or other agreement), the parties can look to their agreement, and California law, to determine their rights and obligations to one another¹.

In the absence of an agreement to the contrary:

- Co-owners have equal rights to possession of the property, and equal rights and responsibilities. If one co-owner excludes the other from the property, the excluded co-owner can recover the property's rental value from the excluding co-owner.
- If one owner can't or won't pay property expenses, the other owner may pay the property expenses to preserve the investment. A co-owner who pays more than his share of operating and maintenance expenses is entitled to a lien against the other co-owner's interest in the property and/or a greater portion of the proceeds from sale following a partition action.
- If a co-owner has paid to improve the property without the consent of the other owner, the co-owner is not entitled to reimbursement. However, in a partition action, the improving owner will be entitled to any increase in proceeds from sale resulting from the improvements. Alternatively, if the improvements were necessary and increased the value of the property, and the improving owner sends notice of the cost of the improvements to the other owner, the other owner must either contribute proportionately or surrender claim to the increased value of the property and rentals.
- If the parties cannot resolve their dispute (either directly, with the assistance of attorneys or others or through a form of alternative dispute resolution), the parties can apply to a court to

¹ Ideally, when co-owning property (whether with family, friends, or others), owners should decide before acquiring the property how decisions will be made, how disputes will be resolved, rights of first refusal (if any), what will occur if one owner does not pay his or her share of the property expenses, etc. Attorney assistance may be helpful; an attorney can help identify the issues to be decided, and document the parties' agreement.

determine the parties' rights and obligations. In a co-ownership situation, this is done through a partition action².

A partition action is a lawsuit in which a co-owner requests that the court divide the property or its sale proceeds. There are two different types of division:

- Physically dividing the property between the co-owners; or
- Ordering the property sold (either by private sale or public auction) and the proceeds split between the co-owners.

Partition action costs (such as filing fees, referees fees, surveyor fees, and title policies) will be allocated between the parties by the court. The costs are usually allocated in proportion to the ownership interests, but a judge may order differently if the judge feels that a different allocation is more equitable. The court will also allocate attorney's fees incurred by the parties.

Partition actions are usually time consuming, emotionally draining and expensive for both owners. The threat of a partition action should cause both owners to carefully consider alternatives. Partition actions should be filed only when discussions and/or mediation cannot resolve the disagreement.

Co-ownership disputes may be settled through one owner buying the other out, or an agreement to sell the property. A knowledgeable attorney can advise about the advantages and disadvantages of partition actions and other options available to feuding co-owners.

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² If the co-owners were married, and are now divorcing, the family law courts will decide the property issues.

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