

How Court Receivers Can Support Your Litigation

Presented by

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For the Woodland Hills Tax and Estate Planning Council

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Receivership Specialists

- More than 550 receivership, partition and fiduciary appointments during the past 24 years
- Efficient and skilled team of in-house professionals with diverse backgrounds and areas of expertise (legal, project management, accounting)
- Relationships with property management firms and real estate brokers
- Offices in 8 major metropolitan areas of California, Arizona, and Nevada



Agenda

- Types of Cases
- Receivership Appointments
 - Fam. Code § 290
 - Code Civ Proc. § 564
- Partition Referee
 - Code Civ. Proc. Part 2, Title 10.5
Partition of Real and Personal Property
(§ 872.010 to § 874.323)
- Recent Changes to the Partition Code
 - Partition of Real Property Act
(§ 874.311 to § 874.323)
- Case Studies (War Stories)





Case Types

- Marital dissolution
 - Judgment collection
 - Rents and profits
 - Estate and partnership disputes
 - Protect and preserve assets
 - Partition of real or personal property
 - Trustee appointments
 - Bankruptcy trustee
 - Chief restructuring officer
 - Foreclosures
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Receivership Appointments

Family Code § 290:

“A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.”



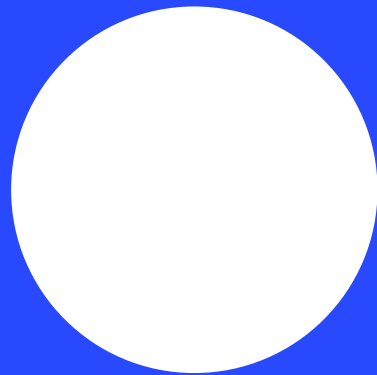
Receivership Appointments

- Code Civ. Proc. § 564(b) lists specific cases where the court may appoint a receiver, and also authorizes appointment “In all other cases where necessary to preserve the property or rights of any party.”
- Purpose of the Receiver:
 - to act as a neutral and assume control of property or assets in which litigants have an interest, to preserve and maintain the property/assets in a pending a civil action
 - To enforce a judgment



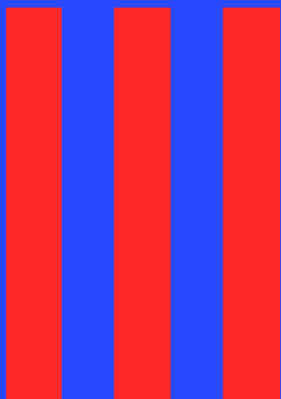
Partition Referee Appointments

In a dispute between co-owners of real property, each co-owner has an absolute right to file an action to partition the real property (CCP 872.210)



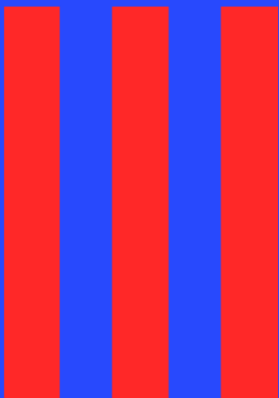
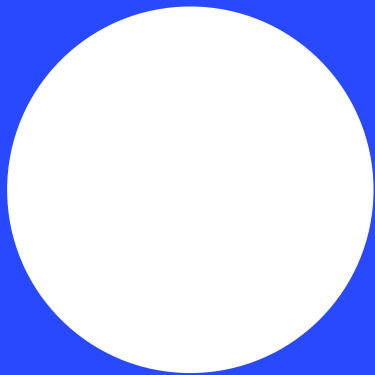
- **EXAMPLE:** There's a dispute between three parties that jointly own a piece of property and party A wants to sell the property and split the proceeds, party B wants to wait until the market warms up, and party C wants to retain the property long-term and collect rental income from an existing tenant

If no agreement is possible, one party can file a complaint for partition of the property (usually by sale) and appoint a referee to sell it. In their motion for a referee, the moving party can recommend the Court appoint a particular referee and then the judge will determine if that referee, or a different one should be appointed

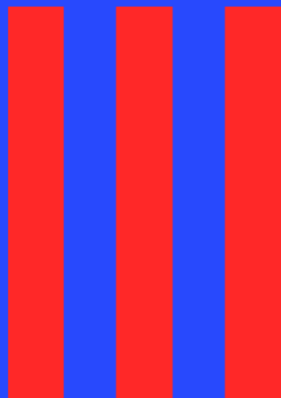
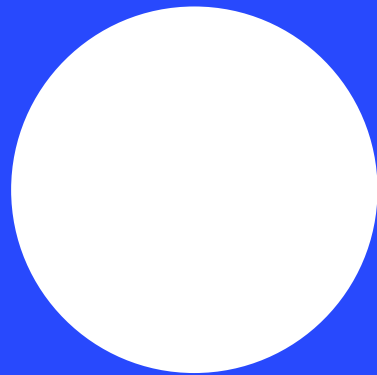


Steps in the Partition Process

1. Appraisal and/or Broker Price Opinion
2. Offer to Parties to Complete a Buyout
3. Report with Recommended Method of Sale (873.510)
4. Extensively Market the Property
5. Contract with a Buyer Subject to Court Confirmation
6. File Motion or Ex Parte Application to Confirm Sale Subject to Overbid; Parties May Stipulate to Sale (873.600)
7. Confirmation and Overbid Hearing
8. Obtain Comprehensive Sale Order
9. Final Accounting and Proposed Distribution of Funds



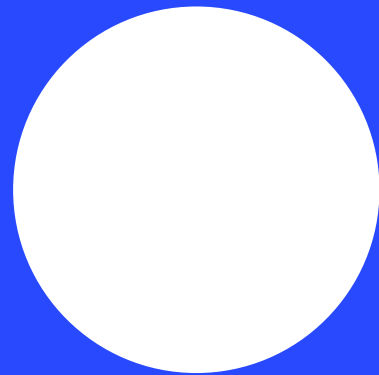
Costs of Partition



- Typically awarded in proportion to a litigant's ownership interests in a property, unless the Court exercises its equitable discretion to make some other allocation of costs (874.0400)
- Costs of partition include attorneys' fees and costs incurred for the "common benefit" (874.010(a))
- May also include property expenses, claims for lost or unpaid rents or damage to the property
- Useful cases regarding allocation of costs of partition
 - *Lin v. Jeng* (2012) 203 Cal.App.4th 1008
 - *Stutz v. Davis* (1981) 122 Cal.App.3d 1
 - *Muller v. Martin* (1953) 116 Cal.App.2d 431

Partition of Real Property Act

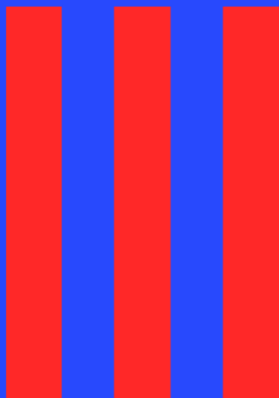
Applicability:



- property held in tenancy in common, with no agreement binding all cotenants that discusses partition/disposition (874.311b).
- applies to partition actions filed after January 1, 2023. (874.311c).
- This new section supersedes the other sections of the partition code, unless the parties agree to forgo these procedures. (874.313a)

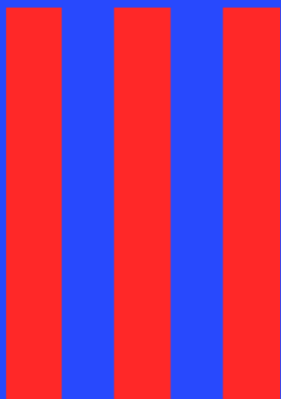
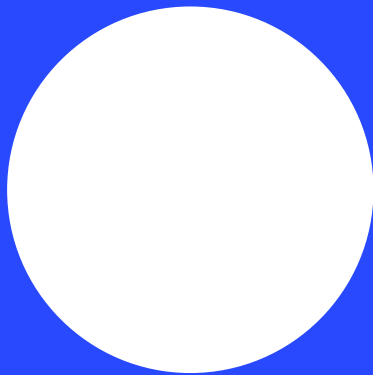
Overall procedure:

1. Court determines fair market value
2. Opportunity for cotenant buyout
3. Order partition in kind unless doing so would result in great prejudice
4. Order partition by sale and appoint a broker



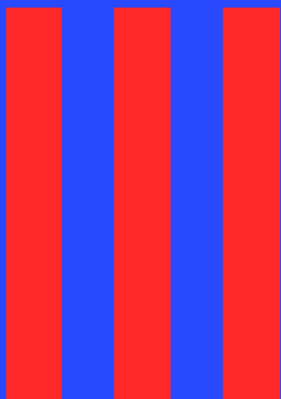
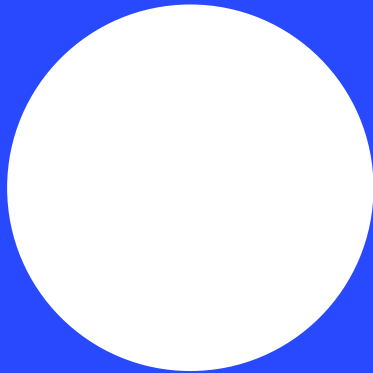
Determination of Fair Market Value

- Court appoints neutral and licensed appraiser to determine FMV. The appraiser must then file a sworn/verified appraisal with the court (874.316a,d)
- 10 days after the appraisal is filed the Court must send notice to the parties (874.316d)
- Parties may file an objection to the appraisal within 30 days after court sends notice, stating grounds for objection
- Whether or not objection is filed, court must conduct a hearing no sooner than 30 days after giving notice of the appraisal to determine the FMV (874.316e3)
- After the hearing the court must send notice to parties of the FMV (874.316g)
- The parties can also agree to some other method of valuation, or the court can determine that the cost of an appraisal is not worthwhile and can instead conduct an evidentiary hearing to determine the FMV (874.316(b)(c))



Cotenant Buyout

- Court must send notice that parties can buy interests of cotenants who requested partition (874.317(a))
- 45 days after this notice is sent, cotenant may file notice with the court that it elects to buy all interests of cotenant(s) who requested partition by sale (874.317b)
- If 1 cotenant wants to buy out cotenant(s) who requested partition, or if multiple cotenants want to buy out the cotenant(s) who requested partition, then the court must send a notice to all parties (and must allocate the right to buy ownership interests if multiple owners want to purchase). (874.317d)
- Court must then set a date at least 60 days out by which the cotenants who want to buy out the other cotenant(s) deposit the purchase price with the court. (874.317e)
- If everyone timely pays, then the Court issues an order reallocating all the interests of the cotenants and disbursing the amounts held by the court to the persons entitled to them. (874.317e)
- If no one wants to complete a buyout, or if no one timely pays the purchase price, then the Court must resolve the partition action via a partition in kind or partition by sale (874.317e2)



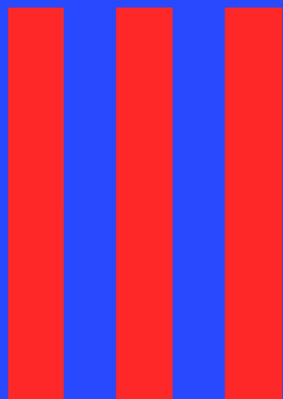
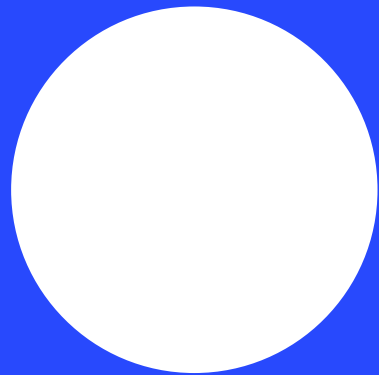
Partition in Kind (874.318(a))

Court must order partition in kind unless the court finds that doing so would result in great prejudice to the cotenants as a group

874.319 lists factors to consider in determining if partition kind would result in great prejudice (totality of the circumstances)

- (1) Whether the property practicably can be divided among the cotenants.
- (2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur.
- (3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other.
- (4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant.
- (5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property.
- (6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property.
- (7) Any other relevant factor

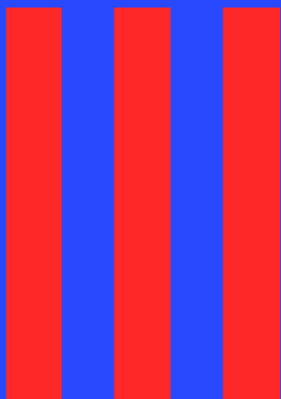
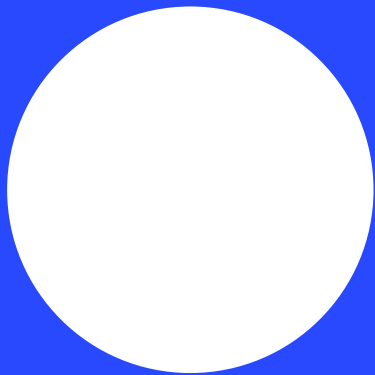
Partition by Sale (874.320)



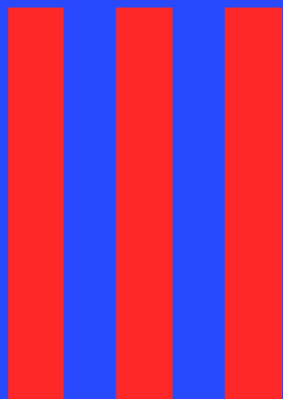
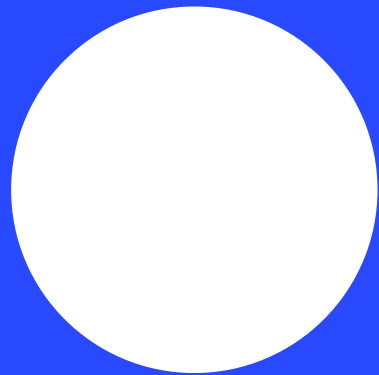
- Court must enter order for partition by sale on the open market
- 10 days after entry of this order, parties can advise if they agree on a broker; if parties agree court appoints that broker
- If parties do not agree, court appoints a disinterested, licensed broker and establishes a reasonable commission; the listing price cannot be lower than FMV previously determined by the court
- If broker receives an offer for at least FMV, then he must file a report with the court stating (874.321):
 - Description of property
 - Name of buyer
 - Proposed purchase price
 - Ts & Cs of sale
 - Amounts to be paid to lienholders
 - Statement re broker commissions
 - Any other material facts relevant to the sale

Partition by Sale (874.320) Contd.

- The sale shall then “be completed in accordance with state law”
- If the broker doesn’t get any offers for at least FMV within a reasonable time, then the court may:
 - Approve highest outstanding offer
 - Redetermine the value of the property and order that it continue to be listed
 - Order sale via sealed bids at auction
- Court “may apportion the costs of partition, including an appraisal fee, pursuant to Section 874.040, except that the court shall not apportion the costs of partition to any party that opposes the partition unless doing so is equitable and consistent with the purposes of this chapter.” (874.321.5)



Issues with the Partition of Real Property Act



1. Selection of appraiser or broker
2. Party/parties must advance costs
3. No captain to oversee the process and instruct the broker
4. No mechanism to resolve scenario where multiple cotenants want to buy out all others
5. No overbid mechanism
6. Difficulties closing sales with non-cooperative parties
 - a. Referee can execute sale documents
7. Difficulty closing sales where asset is over-encumbered
 - a. Referee can strip liens and transfer clear title (872.120, 873.610, 873.720, *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670)

Case Studies (War Stories)

Judgment collection in marital dissolution cases

- Joinder of employer
- Order to take over business

Successor trustee appointments

- Threatening/harassing parties
- Appointment of 21-year old trustee

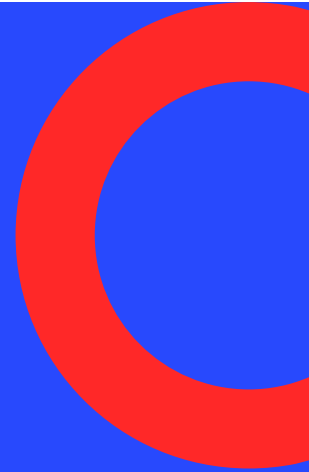
Bitter family disputes

- West Hollywood apartment complex

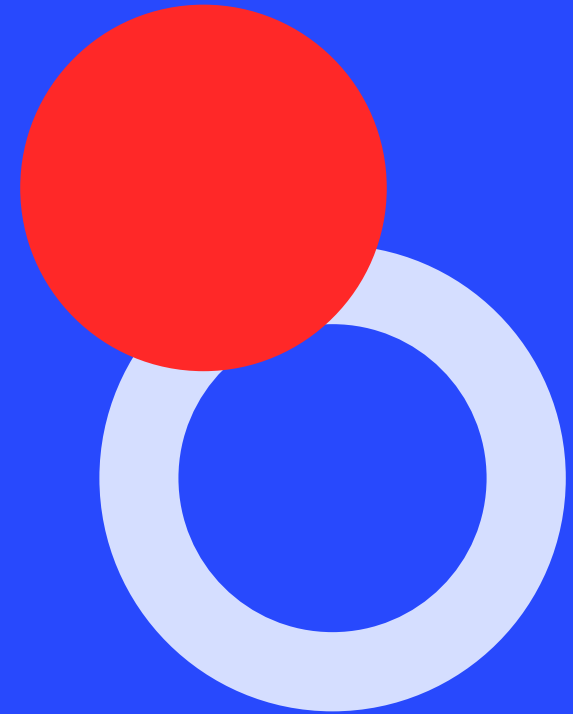
Operating businesses

- Inglewood nightclub

Success of Overbid Hearings



Questions?



Thank you!

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