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Legal Alert

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Partition Sale of Real Property

QUESTION: WHAT HAPPENS WHEN I HATE THE CO-OWNER OF MY REAL ESTATE?

ANSWER: COURTS CAN PARTITION REAL PROPERTY BY EITHER ORDERING A PARTITION SALE OR BY ORDERING "PARTITION IN KIND" TO DIVIDE THE PROPERTY.

How do people wind up owning property with people they hate? Well, perhaps two doctors buy their office together and then decide that they cannot work together. Or, perhaps, through a loan default, the bank becomes the owner of the interest previously held by your co-owner. Actually, most partition cases seem to come from really dysfunctional families!

Let me tell you the story of Evan and Evelyn Hoit and Brent Rankin and Kimberly Webb. Brent Rankin is Evelyn Hoit's son and Evan Hoit's stepson. Kimberly Webb is (or maybe was) Brent Rankin's seventh wife and Mr. & Mrs. Hoit's newest daughter-in-law.

In the summer of 2007, the Hoit's were living in McClouth, Kansas, and Mr. Rankin and Ms. Webb were living in Houston, Texas. Mom and stepdad decided to move to Kearney, Missouri, and son and new daughter-in-law also decided to move to Kearney, Missouri. The Hoits found a house in Kearney, Missouri, and told stepson and daughter-in-law about it. Both couples liked the house. They decided that mom and stepdad would purchase the house and stepson and daughter-in-law would live on the lower level of the house. Both families would share the kitchen.

Stepson and daughter-in-law secured a mortgage to buy the house, but mom and stepdad paid $47,348.03 in cash toward the purchase price, closing costs, and fees. The purchase price for the house was $188,500 and stepson and daughter-in-law got the $142,500 loan for the balance of the purchase price. At the closing, all four parties appeared on the paperwork as "co-owners" of the house.

Stepson and daughter-in-law moved into the house in September of 2007. Mom and stepdad sold their farm and moved into the house in November, 2007. They used the proceeds from the sale of the farm to pay off the mortgage on the new house. Thus, mom and stepdad paid the entire purchase price for the new house.

Well, when mom and stepdad moved into the house, they found out that the kids had taken over an upstairs room that mom wanted to use for her piano. The kids had also strewn their stuff all over the upstairs part of the house so that mom and stepdad had no place for their furniture. Mom and stepdad had to sell their furniture and personal belongings because there was no place to put it in the house.

As the court stated: "Over the next several months, the joint living arrangements between the parties deteriorated." Really, did anyone expect a different result?

Mom and stepdad demanded that the kids move out, but the kids refused to go. (Sound familiar to anyone?) The kids claimed that the house belonged to them! Mom and stepdad finally bought a new house and moved out in September 2008.

Mom and stepdad filed a lawsuit seeking partition of the house and the kids filed a counterclaim. The trial court ordered a "partition in kind" rather than a partition by sale. The trial court said that mom and stepdad had a 98.61% interest in the house and the kids had a 1.39% interest in the house. So the court awarded the house to mom and stepdad but gave the kids judgment against the old folks in the amount of $2,757.48. Of course, the kids appealed the ruling!

On appeal, the kids said that the house was owned equally by the two couples. The kids also said that the court could only partition the house by splitting it ("in kind" partition) or by selling it and dividing the proceeds.

After 13 pages and 25 footnotes, the Missouri Court of Appeals said that the trial court had partitioned the house in kind by awarding 100% of it to mom and stepdad. That result was appropriate because mom and stepdad had paid 100% of the acquisition costs.

The court granted the kids an "owelty" judgment lien against the property for $2,757.48 to compensate the kids for monies they had contributed to the property. Hoit v. Rankin, 320 S.W.3d 761 (Mo. App. W.D. 2010). The kids probably need the $2,757.48 because they are not being invited back for Christmas or Thanksgiving dinners!

An oddly different result was reached in Withers v. Jepsen, 246 P.3d 1215 (Utah App. 2011), where the court ordered that six acres be sold rather than divided by partition in kind. Although one would think the court would divide acreage, minimum lot-size zoning restrictions prevented a practical partition in kind of the property. The owners had originally married in 1994 and divorced in 1998. They reconciled and began living together, without remarrying, in 1999. Mr. Jepsen received the property as a gift from his parents in 2001 and reconveyed the six acres to himself and Ms. Withers as joint tenants. Mr. Jepsen and Ms. Withers separated again in 2002 because Ms. Withers became involved with another man. The court said the property should be sold, the mortgage should be paid, and the proceeds should be divided equally because the "family relationship" raised a presumption that Mr. Jepsen had made a gift of the land to Ms. Withers!

And if you want to see how a Wyoming court dealt with similar issues concerning a cohabiting unmarried couple with two children, take a look at Hofstad v. Christie, 240 P.3d 816 (Wyo. 2010). The court ordered a sale of the home and an equal distribution of the proceeds because the unmarried couple had a "family relationship."

If you are interested in partitioning property because of dysfunctional family relationships, read the cases I've noted. On the other hand, let me know if you have a business relationship where the parties need to split the interest in the real property.