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Breaking up is hard to do: Terminating joint ownership in real estate - by Gordon Orloff

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Over the years a number of clients have asked how to get out of joint ownership of a home or parcel of land when one party cannot buy out the other. The answer is a court proceeding called a “petition to partition” under G.L. c. 241.

When faced with a petition to partition courts first look for a way to physically divide the property on the ground. However, if that is impractical (think a single-family home) then a different approach is called for. A recent Land Court decision, *Clarke v. Morgan*, 19 MISC 000169, 2020 WL 1233764 (Land Court, March 12, 2020), provides a good example of the types of issues faced in these types of actions (the actual decision cannot be linked because it is only available in copyrighted form).

Clarke and Morgan are sisters. Clarke, a sophisticated individual, purchased a condominium unit with her husband. That unit was meant to provide a home for Clarke’s and Morgan’s elderly mother, and Morgan also lived there and took care of their mother at night. Clarke received full ownership of the unit after her divorce and later, in 2009, conveyed it to herself and her sister as joint tenants. By then the mother had moved to a nursing home and Morgan had found a rent paying tenant to live in the unit with her.

After a falling out, the sisters agreed to sell the unit, but filed the action to have the court decide how to allocate the proceeds of the sale (note that in some cases the parties cannot even agree on a sale and the court may appoint a commissioner and authorize him or her to engage a broker to sell the property).

Judge Vhay first considered Clarke’s claim that she was entitled to more than 50% of the net sales proceeds because she had been the sole owner of the unit. However, he rejected that position because Clarke was sophisticated and had knowingly decided to create the joint tenancy despite having other ownership options available.

Judge Vhay also rejected claims for reimbursement of improvements that each party could not establish were made after the joint tenancy was created. Nevertheless, the improvements are typical of those that arise in these cases: a refrigerator, a dishwasher, a stove and garbage disposal, replacing the roof and an oil tank, adding a deck and improving the basement and drainage.

On the other hand, the decision did reimburse Morgan \$13,925 for her outlays after she became a joint owner to install new windows, siding and other exterior improvements and to replace the unit’s boiler.

Morgan was also entitled to be reimbursed for one half of certain real estate taxes she had paid. However, Morgan was required to reimburse Clarke for her share of the net profits from certain rent that Morgan had collected.

This case demonstrates the painful detail of accounting issues in a petition to partition. However, it

also proves that, while breaking up is hard to do, it is possible to end joint tenancies in a way that, while not perfect, at least aims for an equitable outcome.

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