



FREQUENTLY ASKED QUESTIONS

Partition Cases in the Land Court

Partition is a legal process overseen by the court in which people who own real estate together can end their shared ownership.

When people do not wish to continue to own property together, and cannot agree on how to end their ownership, they may be able to file a partition case in the Land Court or the Probate and Family Court. The law establishing the right to partition and explaining the partition process in Massachusetts is [Chapter 241 of the Massachusetts General Laws](#). The partition process can be complicated and time-consuming. If you are considering filing a partition case, or have been named as a party in a partition case that has already been filed, you should get legal advice from an experienced Massachusetts real estate attorney to discuss your options.

The following FAQs provide only a general summary of the partition process in the Land Court, and they may not include everything you need to know about partition. These FAQs do not provide legal advice.

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INFORMATION ABOUT PARTITION CASES IN THE LAND COURT

Definitions of common terms are available at the [end of the FAQ](#).

1. What is partition?

Partition is a legal process, overseen by the court, for splitting up interests in property owned by two or more people (“co-owners”). In Massachusetts, the law on partition is set forth in [Chapter 241 of the Massachusetts General Laws](#). This law allows property owners to end their co-ownership of property by bringing a case in either the [Land Court](#) or the [Probate and Family Court](#). If the co-owners can agree on how to divide the property among themselves, or can agree to have one or more co-owners buy out the other owners’ interests, or can agree to sell the property and split the money, then there is no need to file a court case to do so. It is when co-owners cannot agree on how to split the property, or whether to sell the property, that they might choose to file a partition case in court.

In a court partition case, the co-owners may seek to:

- split the property into separate physical parts (called “lots” or “parcels”) and own each lot individually (this is known as “partition by division” or “partition in kind”),
- have one or more owners buy out the other owners who no longer want to own (this is known as “set-off”), or
- sell the property and split the money (this is known as “partition by sale”).

2. What type of property can be partitioned?

How the property is owned, and by whom, is important to determining whether co-owners can file a partition case in court. Because the law on this subject is complicated and dependent on the facts of your situation, you should get advice from a lawyer about whether partition is available for your property.

Under Massachusetts law, you can partition any “present undivided legal estate in land.” [G.L. c. 241, § 1](#). Typically, you can partition property that is held by co-owners as “tenants in common” or as “joint tenants.” But you cannot file a partition case if you own property as “tenants by the entirety,” a form of ownership that is common for married owners. You also cannot partition land that is held in a trust, or solely by a corporation, LLC, or partnership.



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The court can partition an entire piece of land, or just parts of it. Easements in gross can also be partitioned (such as a deeded parking space). Registered land can be partitioned, but there may be additional legal requirements involved.

3. Who can file a partition case?

Anyone who holds property as a tenant in common or a joint tenant can bring a petition in the [Land Court](#) or the [Probate and Family Court](#) for partition.

4. How is a partition case started?

The person seeking partition is called the “plaintiff” or “petitioner.” You, the plaintiff, must file a complaint, or “petition,” for partition with the court. You must use the court-provided form for partition cases available on the court’s website. The complaint must include a request, in the alternative, for physical division of the property or sale of the property. In the complaint, you must name all co-owners, called the “defendants” or “respondents,” and list what interests they hold. You must also list anyone who holds a mortgage or lien against the property. More requirements are listed in [G.L. c. 241, § 6](#).

5. Where can I bring my partition case?

You can bring a partition complaint in the [Land Court](#) or the [Probate and Family Court](#) departments of the Massachusetts Trial Court. These frequently asked questions are meant to apply to cases brought in the Land Court only, unless otherwise noted. It may make sense for a partition case to be filed and heard in the Probate and Family Court if there are other issues and other cases in the Probate and Family Court involving the same parties.

6. What does it cost to start a partition case?

Court filing fees are typically listed on the court’s website. In the Land Court, you must pay a \$240 fee to file a partition case, a \$15 surcharge fee, and a \$5 fee for each summons you need to serve on the defendants named in the case. You may also be required to notify the other parties in the case by other methods, such as publishing a notice in the newspaper, and there may be additional costs associated with that.

7. What if I can’t afford the fees to file a partition case?

If you cannot afford to pay the court filing fees and costs, you may be able to have the fees waived or have the state pay them. There are state standards for “indigency” in applying for a waiver of court fees. You can [check your eligibility](#) for a fee waiver on the Trial Court’s



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website, [apply for indigency online](#), or use the court forms for indigency available at: [Court forms for indigency | Mass.gov](#)

8. Do I need a lawyer to bring or defend a partition case?

You do not have to have a lawyer to file a partition case. However, parties without lawyers must follow the same court procedures, rules, and deadlines as parties who do have lawyers. The advice of a lawyer could help you because partition cases can be complicated. You can read information about finding a lawyer, including options for limited representation or free legal representation, at: [Finding a lawyer | Mass.gov](#)

9. How do I participate in a partition case?

In a partition case, the parties (and their lawyers, if they are represented) will have to attend court hearings about the partition and file certain documents with the court. (See also [FAQ #19](#).)

Court hearings can be held in person at the Land Court. Other times, hearings are held virtually using videoconferencing. The parties are always provided notice by the court of upcoming hearings. The notice will tell the lawyers and the parties representing themselves when the hearing will be held, where it will be held, and how to access the hearing if it is being held virtually.

The party bringing the partition case, or their lawyer, must file a partition petition at the beginning of the case. (See [FAQ #4](#).) The court can require any of the parties to file other documents throughout the partition action, as needed. Parties can file these documents electronically with the Court or can mail them to the court in hard copy.

10. What will happen to the property in a partition case?

Partition can occur in three ways: partition by division (in-kind), partition by sale, or partition by “set-off.” Each method will change the property’s ownership, as explained in more detail below. (See [FAQ #11](#), [12](#), and [13](#).) In brief explanation: In a physical division, the property will be divided into smaller pieces of property to be separately owned by each party. In a sale, the property will stay in its current configuration, but be sold to a new owner. In a set-off, one or more of the current co-owners will buy out the other co-owners, becoming the sole remaining owner(s) of the property. The court oversees these processes to ensure a just and fair result is reached.



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11. What happens to the property in a partition by physical division?

With partition by physical division, the property itself is divided into as many pieces (“lots” or “parcels”) as there are owners who wish to split the property. Each lot will correspond to each co-owner’s share in the property. An example would be where a large, undeveloped property with no buildings was to be physically divided. If there were two co-owners who each owned one half of the property, the property would be divided into two equally valued lots, one given to each co-owner.

The law *requires* this type of partition—physical division—to take place if the real estate can be divided physically without economic loss. The Land Court always will ask and determine if the property can be physically divided before allowing a partition by sale or set-off. Only in some cases can the land be divided physically in a fair way. Often the property cannot be physically divided fairly among the co-owners, especially if there is already a home on the lot, or if the lot is too small to divide in a usable way. If the property cannot be physically divided, the property will be partitioned by sale—in a private sale or sale by auction—or by a set-off.

12. What happens to the property in a partition by sale?

When the court orders partition by sale, it can be sold by private sale or by public auction. A private sale is like the normal process that owners go through when they sell property. A real estate broker is often used to market the property at a certain price. Potential buyers may make offers, which can either be accepted, rejected, or countered, if allowed by the court. If an offer is accepted, the usual process for negotiating a purchase and sale agreement, and then closing the purchase and sale transaction, will occur under the supervision of the court, typically through the appointed Commissioner. (See [FAQ #20](#).)

The property can also be sold at public auction. In a public auction, the property is offered to the public for sale through a public bidding process. The court may set the terms and procedures for the auction, but, typically, the property will be offered at a starting price, and members of the public (which can include the property’s current owners) will be allowed to attend the auction and bid on the property. The highest bidder will “win” the sale and will be allowed to purchase the property.

13. What happens to the property if one owner wants to “buy-out” the other owners instead of selling?

Sometimes, one or more co-owners want to buy the interests of the other co-owners. This is called a “set-off.” In a “set-off,” one or more of the co-owners will buy-out the other co-



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owners of the property. The co-owners can have an appraisal done to figure out what the property is worth. Then, the buying co-owner(s) can pay the selling co-owner(s) the amount of money their share in the property is worth. Co-owners may agree to a set-off before the property is sold by private sale or by auction.

14. Do all owners need to agree to partition?

No. Because a property owner in Massachusetts has a legal right to partition, it does not matter if other co-owners of the property agree to the partition. Either before filing a case or after, you can attempt to reach an agreement with the other co-owners of the property that will avoid partition, and the court encourages you to do so. Mediation screening is available and there are court-connected alternative dispute resolution and mediation programs the parties may use: [Land Court approved provider list for Alternative Dispute Resolution \(ADR\) | Mass.gov](#).

15. Can I stop the court from splitting up or selling the property as an owner?

Although partition is a legal right available to property owners, a co-owner who wishes to keep the property can avoid its division or sale by buying out the other co-owners through a “set-off.” (See also [FAQ #12](#).) In a set-off, one or more owners pay the other co-owners the cost of their interest in the property. This allows the buying parties to keep the property, as is, without it being split up physically or sold. However, if you want to buy out the other co-owners through a set-off, you must come up with enough money to buy out all the selling co-owners’ interests. That may mean that you must pay off or refinance any existing mortgage on the property to list only you as the owner. If you cannot afford to buy out the other co-owners with cash or a refinanced mortgage, set-off may not be an option.

Once a property has been sold (whether by auction or private sale) or divided, the partition is final and cannot be undone.

16. How long does a partition case take?

The actual time it takes from when a partition case is filed to when the land is partitioned physically, by sale, or by set-off varies from case to case. In general, partition cases can take several months or even years to resolve.

17. Do I have to give anyone notice of the partition case after I file the petition?

After you file a partition case, you must serve the partition complaint on all the defendants to notify them of the case. In the Land Court, you must serve each defendant by following the requirements of [Land Court Rule 13](#) and the [Massachusetts Rules of Civil Procedure](#),



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Rule 4. More information about service of process is available at: [Service of process in the Land Court | Mass.gov](#)

The court may also require other forms of service, such as publication in a newspaper.

You must also record notice of the partition case in the correct registry of deeds or registered land district. You must then file a certificate with the court showing that you recorded the notice at the registry.

18. What if I don't know or can't locate all the co-owners of the property but still want to file a partition case?

It is important that all people with an interest in the property be notified of the partition case, so the court will require you to conduct a diligent search to locate all co-owners of the property. If you still cannot locate one or more co-owners after searching, the court can appoint a "suitable person" (often a guardian ad litem) to represent the interests of a party in the case who has not been personally served, is a minor or someone with a disability, or someone who is unknown but appears to have an interest in the property. [G.L. c. 241, § 9.](#)

19. What happens after I file my petition, make service, and record notice of the petition?

After these initial steps, the court will schedule and hold a case management conference (or "CMC") to discuss the case with the parties and learn about the property. The CMC may be held in person at the courthouse or virtually using videoconferencing or telephone conferencing.

Unless you and the other co-owners choose to participate in mediation or other alternative dispute resolution options, the court will typically issue an "interim warrant" appointing a Partition Commissioner to assist the court in overseeing the partition process.

20. What is a Partition Commissioner?

A Partition Commissioner is a neutral attorney who helps the court manage the partition process. Commissioners can investigate the status of a property to help the court decide if it is safe and secure (Is it insured? Is it abandoned? Are there liens on the property?). The Commissioner can also give the court a legal opinion about whether a property can be divided into separate physical pieces, or if it must be sold. Finally, the Commissioner oversees the eventual partition of the property, whether the partition is by physical division, sale, or set-off. That may require hiring brokers, appraisers, or real estate agents



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to market and sell the property privately, or an auctioneer to conduct an auction for the property, or title examiners or surveyors.

21. How is a Commissioner selected?

The Land Court maintains a list of qualified Massachusetts attorneys who may act as Commissioners. When a Commissioner needs to be appointed, the court identifies the next eligible attorney on the list, confirms there are no conflicts of interest with anyone else involved in the case, and appoints the next attorney as Commissioner. In some cases, the court or the parties, for good reason (like special expertise, familiarity with the property, foreign language skills, etc.), may seek the appointment of a qualified Commissioner who is not on the list or who is not the next attorney on the list.

22. Does the Commissioner get paid? Who pays? How much?

Commissioners are paid for their services. The court determines what is a reasonable fee to be paid to the Commissioner, which is typically the attorney's usual and customary rate for similar legal services. Commissioners are often paid on an hourly basis for their time and services. If the property is partitioned by sale, the Commissioner typically is paid from the sales funds, after any mortgages or liens are paid, but before the money is divided among the owners according to their shares. If the property is partitioned physically, the plaintiff typically will pay the Commissioner's fees but may seek contribution from other co-owners. If the property is partitioned by set-off, those parties who keep interests in the property ordinarily pay the Commissioner's fees.

In the Land Court, the court may order parties to put up money when the Commissioner gets appointed, as a deposit to cover the fees which will be due to the Commissioner at the end of the case. These funds get held in an "escrow account."

23. What does the Commissioner do after they are appointed?

The Commissioner will first figure out whether partition by physical division is possible. The Commissioner then will report to the court on their conclusions and recommendations. The court may order that a title examination or survey be done of the property, if it will be helpful. Sometimes, the court can determine for itself that the property can or cannot be physically divided, with or without the agreement of the parties.

If the Commissioner or the court decides that the property can be physically divided, the property will be divided in the manner ordered by the court in a judgment or "decree." The Commissioner will then record a certified copy of the court's decree, and the



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Commissioner's return, in the registry of deeds for the county where the property is located. Additional requirements for registered land are listed in [G.L. c. 185, § 92](#).

If physical division is not possible, the court will issue a Final Warrant for Sale telling the Commissioner to arrange and manage either a sale of the property or its set-off to one or more owners. Parties have certain rights to appeal a warrant for sale.

24. How is the property sold in a partition sale?

Property to be partitioned by sale can be sold at public auction or by private sale.

Sale by public auction is uncommon. At a public auction, the Commissioner (or a hired auctioneer) auctions off the property to the public after providing notice of the upcoming auction. Typically, the property is sold to the person who makes the highest bid.

A private sale occurs when a real estate broker or agent is hired to list the property for sale, and a private buyer makes an offer that is then accepted. This is the same process that occurs with a typical home sale. (See [FAQ #12](#).)

25. How much will my property sell for?

As with any real estate sale, it is impossible to predict how much a property will sell for on the open market. Factors such as the economic environment, the location of the property, the condition of the property, and the local demand for housing can impact the sale price. Typically, the parties may request that the property not be sold for less than a certain amount. The court may then indicate a minimum price that the property must be sold for unless the court gives permission to sell at a lower price.

26. What does a Commissioner do after the property is sold?

After a property is partitioned by sale, the Commissioner will ensure that all documentation has been recorded with the Registry of Deeds, or filed with the Registered Land District, as necessary to finalize the partition. The Commissioner will also file all required returns and reports with the court and seek court approval of the fees owed to them at that time. At that point, the Commissioner's job may be over.

But, a Commissioner can also continue to help the court by investigating and recommending whether any co-owner should get more or less of the profit from the sale than their percentage share of ownership. In this role, the Commissioner may be appointed to act as a "Master" or "Special Master" on behalf of the court and may conduct hearings, review evidence, and make fact findings. The court can also appoint someone other than



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the Commissioner to serve as a Master. The Master's report to the court requires final approval by the court. The court will make any final decisions about the distribution of profits from a property's sale.

27. How are the money proceeds of a partition sale divided?

The proceeds of a partition by sale first are used to pay any liens on the property, such as mortgages or tax liens and standard fees and expenses of closing and of the partition. Proceeds also are used to pay the Commissioner and anyone else who was used by the Commissioner or the court to help with the sale of the property (e.g., brokers, agents, appraisers, etc.). Any remaining proceeds are split among all the co-owners of the property.

Typically, the proceeds are split among the co-owners according to their shares in the property. However, the court may determine that one party owes credits or other contributions to another party, as when one party always pays real-estate taxes or has made improvements to the property that increased its market value. If there are credits to be determined, the court may require those to be worked out before partition happens, or the court may hold funds from the sale "in escrow" until the court resolves all disputes. Once the court reaches a final decision on the credits and contributions owed, they will be deducted from the owing-party's share of the proceeds. Then, the court will order the distribution of the proceeds to the parties according to their ownership interests. (See also [FAQ #30.](#))

28. What if there are tenants living in the partition property?

A partition action may, or may not, affect the rights of tenants other than the owners who are living at a property that is being partitioned. Sometimes, if there are renters living at the property, it can affect the value of the property being partitioned. This can be discussed in court proceedings.

29. What if one owner lives at the property and the others do not? Does the resident owner owe rent to the other owners?

When you own property with someone else, you both have the right to live there. When one owner lives there and the other doesn't, that may happen without dispute. However, the court might decide that the first owner has "ousted" the second owner. This means that the first owner has interfered with the second owner's right to live there. If the court finds that an ouster has occurred, it might order the first owner to pay rent to the second owner. However, the court is not required to do this. If no ouster has occurred, and you don't live at the property, you won't be able to get rent from the co-owner who does live there.



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30. What if I have spent money on the property and the co-owner(s) never contributed?

If you have paid for things that improve or preserve the property's value (such as mortgage payments or taxes), you can ask the court to order contributions from the other co-owners. Often the Land Court refers these issues to the Commissioner to consider, and then to report to the court. (See [FAQ #26](#) and [#27](#).) The court decides whether the other co-owners must contribute, and how much. Additionally, if the costs of the partition case have been paid unequally by one or more of the co-owners, part of the reasonable and necessary costs of the partition case, as determined by the court, may be recovered from the other co-owners.

31. What if there is a mortgage on the partition property?

Property that has a mortgage can still be partitioned. Mortgagees need to be named in the petition and notified of the case.

If a property is partitioned by sale, the gross proceeds of the sale will be used to pay off the mortgage or any other liens on the property.

If the property is partitioned by division into separate lots, the owners may be required to pay off the entire outstanding mortgage.

If one or more owners wants to buy out the other co-owners in a "set-off," the mortgage may need to be paid off or refinanced in the name of the owner(s) who will keep the property.

32. What if there is a tax lien or other unpaid lien on the partition property?

Property with liens can still be partitioned. As with mortgages, liens on partitioned property can be paid off from the proceeds of a sale. In a partition by physical division, the owners of the divided parcels are responsible for paying any taxes and liens on the parcels that were once held jointly.



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DEFINITIONS FOR COMMON PARTITION TERMS (GLOSSARY)

TERMS A-Z	DEFINITION
Citation	Notice of a court proceeding which is made to a defendant or interested party by one of several means designated by statute or court rule, which can include registered or certified mail, hand delivery by sheriff or constable, and/or publication in a newspaper. Whenever possible, service of notice of the case and of a copy of the complaint is by delivery to the defendant, by a sheriff, of a summons obtained from the court. This is arranged for by the plaintiff.
Commissioner's Deed	A deed from the Commissioner to the new owner of the Property transferring title to the Property.
Commissioner's Return	The report the Commissioner delivers to the court after an interim warrant or warrant is issued by the court. The report may say what steps have been taken in the partition process, what still needs to happen, and any other information the court requested.
Co-owner / cotenant	One of multiple people who together own a piece of property.
Easement	The right to use another's land for a specific limited purpose; usually described in a deed or other document (for example, an easement may allow one owner to cross the property of another to access a road or beach).
Easement in gross	An easement that can only be used by a particular person.
Escrow	In the partition context, an escrow account is an account where the Commissioner keeps the money paid by the buyer for the property until it is time to use the money to pay for the expenses of the sale and to pay the property sellers (the co-owners) their shares of the sale proceeds.
Final warrant for sale	In a partition context, a court order to the appointed Commissioner allowing the sale of the property and directing the Commissioner to prepare and manage the sale of the Property.
Indigent	Impoverished; needy; poor; without funds. Many court fees are waived for people who are indigent and file an affidavit of indigency.



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TERMS A-Z	DEFINITION
Interim warrant	In a partition context, the initial court order to the appointed Commissioner allowing his or her investigation into the status of the property, any liens on the property, the value of the property, and more details.
Interest (in property)	The share or amount of a property that a person owns, and the way that share is owned.
Joint tenants	Two or more persons who share title to the same real property, via the same instrument (e.g., deed or will), and who have the right to succeed to the entire property upon the death of the other person(s) (referred to as the right of survivorship).
Lot	Unit of real estate property; an area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan.
Master / Special Master	An attorney (sometimes the same attorney who functions as Commissioner) appointed by the court to hear evidence outside the court's proceedings, and then report their findings back to the court. Mass. R. Civ. P., Rule 53(a) .
Mediation	A problem-solving process where a neutral party with legal experience acts as a facilitator between parties to a lawsuit. The mediator works with the parties to help them reach a mutually-agreeable resolution to their problem.
Partition by division	To physically divide a single piece of property owned by multiple parties into individually-owned parcels (also "Partition in kind").
Partition by sale	To end co-ownership of a piece of property owned by multiple parties by having the property sold and the proceeds distributed.
Partition Commissioner	An attorney appointed by the court when parties cannot agree on how to partition a piece of property, who then recommends how best to divide or sell the property, and/or distribute the proceeds and who carries out the court's orders.
Partition in kind	See Partition by division .
Partnership (land held in)	An association of two or more persons as co-owners of a business for profit. Partners share profits or losses, control and management of a business enterprise.



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TERMS A-Z	DEFINITION
Recorded land	Real estate, the title to which has not been certified by the Land Court. Title documents are filed with Registry of Deeds. Most land in Massachusetts is recorded, as opposed to registered land.
Registered land	Real estate, the title to which has been certified by the Land Court after a case before that court following certain statutory procedures (as opposed to recorded land).
Service by Publication	An alternative to personal service which allows plaintiffs to serve defendants that they cannot serve personally, by publishing notice of the court proceeding in a newspaper.
Set-off	When one or more co-owners of a property pay the other co-owner(s) of the property the value of their respective shares in the property, and become the new sole owner(s) of the property.
Tenants by the entirety	A form of property ownership available to spouses only, who take identical interests simultaneously by the same instrument; interest passes automatically to the other spouse on death of one spouse.
Tenants in Common	A form of property ownership by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property; interest does not pass automatically to the others on death.
Title	The legal ownership of a property, including any rights that come with owning the property. Title is typically documented, often by a deed or a certificate of title.
Trust (land held in)	The right to real or personal property held by one party (the trustee) for the benefit of another (the beneficiary).
Waiver (of court filing fees)	When the court decides not to require fees to be paid in the case, usually because a party is indigent (see " Indigent " definition).
Warrant	In a partition context, a court order to the appointed Commissioner allowing the division, sale, or transfer of property.