

I am an atty with over 40 years of practice who has handled dozens of partition cases. I was here last year on HB 1312

I am in favor of the proposed changes the Real Property Code sections regarding Partition Actions, and wish to offer my observations of some practical hurdles that have been encountered under the new law.

HB 1439 addresses two of the issues we have encountered in every day application.

As originally enacted, the law did not consider existing liens on the property to arrive at an equity amount a defendant must pay to buyout the plaintiffs. It was just the fair marked value multiplied by the percentage of ownership being acquired. Thus, a property worth \$500,000 with a \$400,000 mortgage still required one 50% owner to deposit and pay \$250,000 for the other owner's 50% interest, when really he should only pay \$50,000, one-half of the equity.

The new amendment also allows the court to consider expenses paid or rental income received by a cotenant and make adjustments between the parties for either moneys paid or moneys received.

Some judges were allowing for this even without these provisions, but others were applying the language of the code.

THESE ARE GOOD CHANGES, AND MAYBE NEXT YEAR WE CAN ADDRESS OTHER ISSUES WITH PRACTICAL APPLICATION AS WELL

1. THE DIFFICULTY FOR THE PURCHASING COTENANT TO FUND A BUYOUT, SINCE THEY ARE UNABLE TO USE THE PROPERTY AS COLLATERAL.
2. A PLAINTIFF CANNOT BUYOUT A DEFENDANT, ONLY VICE VERSA  
WHAT REMEDY IS THERE FOR AN OWNER THAT WANTS TO KEEP A PROPERTY BUT WANTS RID OF A CO-OWNER THAT IS UNCOOPERATIVE AND PAYS NOTHING AND DOESN'T WANT TO SELL??? HE CANNOT FILE AND FORCIBLY BUY HIM OUT.

I thank Delegate Reilly for submitting this bill at my request and support its passage.

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