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OPAL MITCHELL LEE Property Preservation Project



Partition Agreements & Basic Real Estate Documents

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PARTITION AGREEMENTS

A partition is a division of an interest in real estate among the owners.

When doing a partition, it will be necessary to properly describe the real estate and to know who the owners are.

Then, the real estate can be divided through the use of a voluntary partition or by judicial partition. A voluntary partition could occur when the owners of the property reach an agreement to divide the property.



When the parties cannot or do not agree, it may be necessary to file suit to ask the Court to partition the property. When suit is filed, a party may request a jury trial. The trial could also be without a jury.

Any person who has an ownership interest in the property can ask that the real estate be partitioned.

If it is determined that the real estate cannot be fairly divided, the Courts can order that the property is sold. When this happens, what's left after taking the expenses from the sales price will be divided between the owners.

After the trial, and if the property is ordered to be partitioned, the Court will appoint Commissioners (3 or more) whose job is to partition the property.

BASIC REAL ESTATE DOCUMENTS

The basic real estate documents are the deed, real estate lien note, deed of trust and release of lien.

A **deed** transfers an interest in real estate from a grantor to a grantee. The grantor is the person transferring the real estate; the grantee is the person receiving the real estate.

For a deed to be valid, it needs to include:

- Date – the effective date of the transfer
- Names – the names for all parties. Make sure the names are consistent throughout the document.
- Property description – a clear description of the property. Usually, it is best to use a legal description of the property. It is not a good idea to use the description from the taxing agency.
- Signature— the deed must be signed by the grantor.

A **real estate lien note** is a promissory note. It is an agreement where the borrower promises to pay money to buy the property. The note usually accompanies a deed of trust and comes into existence at the same time.

There are various types of real estate lien or promissory notes. The borrower should be careful to review the terms of the note with his/her attorney.

A **deed of trust** is a document that protects the lender from a borrower's default. It usually permits the lender's representative (trustee) to foreclose the debt created under

BASIC REAL ESTATE DOCUMENTS (cont'd)

the real estate lien note.

The deed of trust is usually lengthy and you should be careful to review it with your attorney.

Items to watch out for include –

- Date – the date on the deed of trust should be identical to the deed;
- Grantor – the name should be consistent with the other instruments. All who own an interest in the land should sign the deed of trust.
- Trustee – someone must be named as trustee;
- Beneficiary/Grantee – the names should be consistent and correct.
- Acknowledgement – all owners have to sign in the presence of a notary;
- Return – this document should be returned to the person holding the note;
- Legal description – be sure to use the same legal description that was used in the deed.

Release: – Once you have paid your real estate lien or promissory note in full, you need to make certain that the lender gives a release of lien that specifically describes the property that is released.

Items of interest

- The information to be used in the release of lien can be found in the deed of trust.
- Record the release immediately.