

## **Partition Actions: Everything You Never Realized You Ought to Know About Them**

William J. Maffucci, J.D.\*

Partition is a hoary proceeding.

I say that mischievously, hoping that the phonetics will fool a few readers into thinking that the topic is sexy and provocative. But it's just as likely that every reader will know that "hoary" merely means grey or greyish white—like an elder's hair—and, by extension, something old, maybe a bit venerable, but basically boring.

Because that's what partition is: an old, somewhat venerable, but basically boring procedure. But it's a useful tool for the real-estate attorney. Knowing how it works, and for whom it can work, is helpful even for those real-estate attorneys who would never venture into a courtroom.

When I decided to tackle my first partition matter, I began by reading the Pennsylvania Rules of Civil Procedure 1551-1574 seriatim. Big mistake. They're confusing, and they use ancient common-law terms without defining them. I'll walk through the rules at the end of the materials below, but I think you'll be better able to digest them if I first address the FAQs.

### **I. FAQs**

#### **Q. What is "partition"?**

Partition is a proceeding in equity to determine the way in which co-owners of real estate can dissolve their interests in it and part ways. It's tempting to think of it as "real-estate divorce," but that might cause confusion with an analogous proceeding in Pennsylvania's Divorce Code, 23 Pa. Cons. Stat. § 3507, that applies specifically to the real estate of divorced and divorcing couples and that has been interpreted<sup>1</sup> to exempt that property from the general partition rules.

There are ways in which the partition can be effected:

- physical division of the property, with each party receiving part of it (sometimes called "partition in kind");
- a sale of one or more of the interests of a party or parties to another party or parties (sometimes called "partition by allotment");

---

\* Counsel, Semanoff Ormsby Greenberg & Torchia, LLC

<sup>1</sup> *Recktenwald v. Recktenwald*, 284 Pa. Super. 185 (Pa. Super. 1981).

- a sale of the property to third parties so as to generate proceeds to be distributed among the interest holders (sometimes called “partition by sale”).

Sometimes a partition is effected as a hybrid of two or all three of the approaches above.

**Q. Who is entitled to bring an action in partition?**

Partition can dissolve ownership interests held as tenants in common or as joint tenants.

It cannot dissolve a tenancy by the entirety (TBE), because of the unity of that estate. But married people holding title as a TBE who are neither in nor contemplating proceedings but who nevertheless want to use the partition rules could obtain standing to do so by conveying the property from themselves holding title as a TBE to themselves as joint tenants or as tenants in common.<sup>2</sup>

A property held exclusively or in part by a life tenant may be subject to an action in partition brought by a remainderman, although the procedure contemplated by the rule that so specifies is unique to that relationship. Rule 1564.<sup>3</sup>

**Q. In what situations do claims of partition often arise?**

Partition claims among owners of large developable tracts, which were common during the Commonwealth’s infancy (a fact that explains why the law of partition has historically favored physical partition), are no longer common, but they’re not extinct.

More common today are partition actions brought between or among family members who have collectively inherited property but who have grown apart (resulting in different needs for the real estate) or who have come to dispute their respective rights and obligations with regard to the property.

Also common are claims of couples who purchased property intending to marry but whose relationship dissolved before marriage.

Occasionally partition actions are brought by people who (without incorporating or forming another business entity) buy land together to run a business on it but subsequently develop disputes as to the business.

---

<sup>2</sup> Married persons who hold title to an interest in real estate as a TBE, and who have no desire to change their status, can nevertheless become parties to a partition action if their TBE interest is one of multiple interests in the same property that they and the other interest owners hold as tenants in common or as joint tenants.

<sup>3</sup> Rule 1564 does not refer expressly to holders of reversionary interests, but some have interpreted the rule as applying locally to such interest holders, too.

Partition is also available to a remainderman who objects to the way in which a life tenant is using the property. Rule 1564 contemplates that a life tenant who has been dispossessed through such a proceeding may be awarded annual payments, with appropriate security (presumably, such as a mortgage), equal to the rent, interest, or income from the property.

**Q. Do partition proceedings generally mirror other types of real-estate litigation or general civil litigation?**

Not really. Although Rule 1551 specifies that the civil rules shall govern actions in partition “[e]xcept as otherwise provided in this chapter,” the peculiarity of the partition rules and of the objectives of partition proceedings generally leave little similarity between them and most other civil proceedings, including other types of real-estate litigation.

Perhaps the most important distinction between partition proceedings and most if not all other types of real-estate litigation is that, at least as a practical matter if not as a matter of legal theory, any plaintiff who has standing (i.e., owning an interest in real property subject to partition) can not only state a claim for partition but can do so conclusively. To establish that you have standing is to establish that you are entitled to partition. Effectively, the ability to obtain a partition of real estate can be considered one of the bundle of rights of property ownership.

Some might dispute this. They could point out (accurately) that, by and large, partition actions are brought after the relationship among the co-owners has broken down. But the rules don’t require that the plaintiff allege such a break-down. They require only that the plaintiff make the two averments necessary to establish standing: a description of the property, and the nature and extent of the interests in the property. Rule 1554.

Some might argue that the rules must be informed by the common law, and they might interpret the common law to require that the plaintiff aver that the relationship among the co-owners has broken down. But even if that were true, the averment would be tantamount to a mere formality, because it would be difficult or impossible for a defendant to disprove a plaintiff’s allegation that there is a dispute.

But there is a better way to refute the argument that a plaintiff’s mere standing to bring an action in partition effectively entitles the plaintiff to obtain an order directing partition: The argument overlooks the fact that an order directing partition under Rule 1557 is a preliminary order, which merely sets the partition process in motion, and that it will eventually be superseded by a more extensive order entered under Rule 1570 that declares how the partition is to be effected and explains what must be done to ensure that each party obtains value approximating that party’s interest in the property.

The Rule 1557 “order directing partition,” thus, is analogous to an order entered by a United States Bankruptcy Court immediately or promptly after a bankruptcy petition is

filed. As long as the debtor has complied with the filing requirements (the principal purpose of which is to ensure that the debtor has standing to file for bankruptcy), the court stamps the filing (electronically or the old-fashioned way) “RELIEF ENTERED.” Then the real work of figuring out how the debtor’s estate will be liquidated or the debtor’s affairs reorganized begins.

So, too, in partition proceedings, the court’s early entry of an “order directing partition” is largely perfunctory. And it triggers the long, hard, and often fact-intensive work of deciding the most equitable way of awarding all of the parties the approximate value of their respective interests in the property.

How that work is carried out is a third major difference between partition proceedings and other types of civil litigation: In partition proceedings, the work is usually accomplished in a series of steps, some or all of which require an evidentiary or quasi-evidentiary hearing. And they rarely culminate in a protracted trial. Instead, they almost always culminate in a transaction that carries out either a settlement of the parties or the court’s findings of fact and conclusions of law about the most equitable way to effect the partition.

**Q. Are you saying that partition proceedings are complex and arcane, such that they should be left to lawyers who specialize in them, or are they something that an attorney who handles other types of real-estate litigation should not hesitate to undertake?**

The question is academic, because (as far as I know) there are no real-estate litigators who “specialize” in partition actions in the sense of handling a steady stream of them. They’re more “occasionalists” than specialists.

Once the litigator understands the fundamental differences between the partition actions and other civil proceedings, and once the litigator gets a handle on the procedural rules (which, again, I will review in response to the final FAQ below in a way that I believe will be easier to digest than simply reading the rules seriatim), there is nothing about partition actions that should be daunting to the real-estate litigator who undertakes one for the first time.

But there are two quaint and curious terms of art, born in a different era but preserved even today in the procedural rules, with which the lawyer should be familiar: “owelty” and “purpart.”<sup>4</sup>

- “Owelty” (pronounced OH-•l-tee) is payment made from one party to another to effect equality in the value of the interests they receive through the partition. When the initial valuations of the parties’ respective interests are the same (such as when two co-tenants have a 50% interest and neither has a

---

<sup>4</sup> Be careful when you type or dictate either word. Many auto-correct programs don’t recognize either of them. And the words sound like lots of common words to which the auto-correct programs might change them—a mistake that a subsequent spell-check would not, and a subsequent grammar check might not, detect.

right to any equitable adjustment of the valuation), owelty must be paid when, through the partition, the parties receive parcels having different values. When the value of the parties' respective interests is not the same, owelty must be paid when, through the partition, the parties do not receive property reflecting the values of their respective interests.

- A “purpart”<sup>5</sup> is a share that a party receives of an estate that was formerly held in common. When land is physically divided, for example, the portion that each tenant-in-common receives is a purpart.

Although the procedure and law governing partition proceedings are straightforward, partition actions can become dauntingly fact-intensive if and when the parties are seeking to establish (through the procedures I will review below) that the value of their respective interests should be adjusted because of the disproportionate ways in which they have previously enjoyed the benefits, or bore the burdens, of owning the property.

**Q. Is the value of a party's interest in real property for purposes of partition determined solely by the percentage of ownership interest as determined by the land records and laws of testate and intestate succession?**

**In other words, if a deed conveys property to three tenants-in-common equally, but during the years that they co-own the property (and before one or more of them files for partition) their respective benefits of ownership (such as time using the property) and respective burdens of ownership (such as payment of real-estate taxes as they accrue) are vastly different, do the partition rules contemplate that they will each receive exactly one-third of the property or of the value of the property?**

---

No. Because partition is a proceeding in equity, the rules contemplate that the parties will all have the right to present facts that might justify allowing a credit for a party (adjusting that party's ultimate valuation upward) or a charge against a party (adjusting it downward) “because of use and occupancy of the property, taxes, rents or other amounts paid, services rendered, liabilities incurred or benefits derived” in connection with the property. Rule 1570(a)(5).

That provision, tucked in a list of eight factors that must be considered in a final list or order of partition, is the largest factor in making partition litigation potentially so

---

<sup>5</sup> When spoken, “purpart” is a crisp plosive. Repeating it frequently after short intervals can become, well, rather annoying to your listeners. It might even make them fear that you're accidentally spitting at them. Do not try this at home, or around the negotiation table—unless, of course, on balance, you discern in good faith some concrete benefit in annoying or dispersing everyone within earshot or your splash zone.

expensive, time-consuming, and fact-intensive as to compel the parties to settle long before they get to trial.

**Q. Is the property physically divided and distributed among the parties?**

When the partition process first developed in earlier centuries, the properties being partitioned were often large farms or developable tracts of land that could readily and equitably be divided, physically, among the owners. The courts preferred such a physical subdivision, specifying that there would be no sale of the interests unless the property could not be physically divided in an equitable way and without prejudice to its overall value.

The procedural rules still embody the principle that property that *can* be physically divided in a way that is fair and feasible *must* be so divided, so that no parties are forced to sell their interests (either to other parties or on the open market). Rule 1061. But nowadays, at least in the Philadelphia metropolitan area (where I practice), the vast majority of properties subject to partition actions are *not* readily capable of physical division in a way that is equitable to the parties and does not prejudice the overall value of the property.

Many properties, in fact, are small lots improved with single-family residences or single commercial dwellings. Even a single unit in a condominium can be partitioned. It's hard to imagine a situation in which a home, condo unit, or commercial building situated on a parcel that cannot be further developed could be physically divided among parties in a way that is equitable and that does not impair the overall value of the property.<sup>6</sup>

**Q. If property can be physically divided into the appropriate number of purparts but the value of the purparts does not reflect the respective values of the parties, such that one or more of the parties must pay owelty, do the parties have the right to object to the contemplated partition?**

Yes. This type of partition, contemplated by Rule 1560(b), is one of two types to which the parties have the right to accept or reject under Rule 1566. But there is a risk to making such an objection: It triggers an open bidding process, confined to the parties. Rules 1566(c) & 1567.

Before any such private auction can occur, the court must fix separate valuations for the individual purparts and a single valuation for all of the purparts collectively. Nothing in the rules requires that the collective valuation equal the total of the separate valuations. And in many instances the nature of the property would make it illogical to do so.

---

<sup>6</sup> I have been litigating real-estate cases for over 30 years, and I seem to recall only one instance in which a single residence was physically divided through partition, and the disputants did it in a dramatic fashion: by painting a white line down the center of the property. Then again, what I might be recalling is the plot from "A House Divided," an episode of *The Munsters* television series in the 1960s.

The purparts at such an auction are offered both individually and collectively. Rule 1567. The purpose of offering the purparts both ways is to determine whether the total for the prevailing bids received for the purparts individually exceeds the prevailing bid for all of the purparts offered collectively. *Id.* The rules do not expressly require the court to select the approach that yields the higher price. But the rules prevent the court from accepting any individual bid for a purpart or any collective bid for the purparts if the bid is less than the court's previously fixed valuation for the purpart or purparts. Rule 1567.

**Q. If property can be physically divided not in the same number of purparts as there are owners, must the property be sold?**

No. In that instance the court must propose to divide the property "into such number of purparts as shall be most advantageous and convenient without regard to the number of parties." Rule 1560(c). This is the other type of partition that must be submitted to the parties for acceptance or rejection, a rejection triggering the open bidding (confined to the parties) required by Rules 1566(c) & 1567.

**Q. If the property cannot be physically partitioned, what type of sale is more likely: a sale of interests among the owners (the grantee paying the grantor), or a sale to non-owners (with the proceeds being distributed to the owners)?**

The court must give preference to a sale of interests between or among the parties, through the private bidding procedure contemplated by Rules 1566(c) & 1567. A sale to third parties will be allowed only when a private sale confined to the parties cannot be confirmed (or, if conducted, cannot be confirmed). Rule 1568.

Partition through a sale to a third party or parties can be conducted, in the court's discretion, either as a public sale or as a private sale that is not limited to the parties. *Id.*

**Q. Are sales or transfers of the property of interests in the property final?**

No. All transactions conducted to effect a partition of the property must be confirmed by the court.

**Q. Do the rules and the law interpreting them provide parties with any protection from the potentially adverse capital-gains consequences of having their interests in the real estate liquidated?**

Yes. Although the rules themselves make no reference to tax considerations, the commentators agree that the Supreme Court, in adopting the rules, recognized the need to reduce the likelihood that the way in which the property is ultimately partitioned would result in capital-gains tax obligations that the parties should bear. That's why the Court made it clear, as the lower courts have recognized, that any party has an absolute right to object—with or without providing a reason for the objection—to any proposed partition that *other* than a partition, under Rule 1560(a), in which the property is physically divided among the parties in amounts that reflect the parties' respective interests and that do not compromise the overall value of the property. This is sometimes called (although not in the rules themselves) a "perfect partition," and it is very rare. The reason it is exempt from the parties' absolute right to object is that it results in no capital gains.

Some commentators describe the power to object to any partition other than a perfect partition the "maximum protection" against adverse capital-gains tax consequences. *See, e.g.,* GOODRICH-AMRAM § 1562:5, Commentary. But it's not an absolute protection, because an objection necessarily triggers a private sale conducted (with open bids) among the parties (and only the parties), and such a sale could result in the same (or even greater) capital gains to the objecting party if another party prevails with a bid that results in proceeds to be distributed to the objector.

There are two ways in which such a private sale might not be finalized: If defendants<sup>7</sup> holding a majority of the value of the property object to it, or if the court does not confirm it. (In the latter case, the court might decline to confirm the sale *because* it resulted in the same (or worse) adverse tax consequences that an earlier objecting party had hoped to avoid.) But in either case, the parties or the court might be merely kicking the can down the road, because the objection or non-confirmation would require another public sale, or a private sale not confined to the parties, that again could result in a commensurate capital-tax burden.

**Q. Can the parties to a partition proceeding settle it mid-stream, or is the institution of a partition action analogous to the filing of a bankruptcy case, which generally cannot be withdrawn without court approval?**

Yes. Many partition actions are settled upon the agreement of the parties. One of the principal factors prompting settlement is the legal expense of the proceedings—a burden that is increased by the parties' obligations not only to pay their own lawyers but also to share the fees and costs of any master appointed.

It isn't always necessary for parties who reach such a settlement to dismiss the action. If the settlement agreement is itself a termination of the co-ownership interest (i.e., something that the court could approve through the partition action), and if the anticipated additional legal expense (given the nature of the settlement) is not excessive, masters and courts are generally willing to accept and effect the settlement terms through the partition process.

---

<sup>7</sup> Note that a plaintiff has no right to make such an objection, even though a plaintiff had the right (as did the defendants) to object, earlier in the proceedings, if the property were proposed for a partition by allotment under Rule 1560(b) or a partition by sale under Rule 1560(c).

**Q. Is there anything to keep in mind, while reading the partition rules, that might help avoid confusion?**

Yes.

The most important thing to keep in mind is that the rules do not (or do not necessarily) set forth the partition process in straight chronological order. Rule 1568, for instance, describes a public sale, which must be conducted “as the court may direct,” but that court direction cannot occur until the court has entered an order under a subsequent rule, Rule 1570.

The same might be said with regard to Rule 1567, which regards a private sale confined to the parties. I say “might” because the language of Rule 1570(a)(7) requires the court to specify in its Rule 1570 order whether the parties “have . . . bid” at a private sale, meaning that such sale could have taken place before the court issues its Rule 1570 order.

It’s also helpful to keep in mind, because the rules rarely remind you, that any transaction effected in partition is subject to confirmation.

## **II. PROCEDURE**

### **Pleadings**

The pleadings in partition actions are often much simpler than those in general civil litigation. The only required averments are a description of the property itself, the identification of all co-owners (who all must be parties to the action) of the property, and a statement of the nature (e.g., tenant-in-common) and extent (i.e., percentage interest) in the property. Rules 1553-1554.

Because partition is a proceeding in equity, a plaintiff is permitted to argue that the value of the plaintiff’s interests must not be based purely on the nature and quantum of the interest as a matter of real-estate law (e.g., a 50% interest as tenant in common) but, instead, must be adjusted to reflect disproportionate burdens of property ownership that that the plaintiffs has borne or the disproportionate benefits of ownership that the defendants have enjoyed. Rule 1570(a)(5). A complaint in partition should include averments that lay the foundation for any such an adjustment the plaintiff wishes to make..

All co-owners of the property must be joined as parties<sup>8</sup> to the proceeding, either as plaintiffs or as defendants.

---

<sup>8</sup> For ease of reference, I will use the term “party” to mean the person or entity who owns an undividable co-ownership interest. If a husband and wife hold an interest in property as tenants by the entirety, but their interest is one of multiple interests and they hold it, as between the other owners, as tenants in common, the husband and wife would a “party” (not two “parties”) even though both of their names would be in the

If title is held in whole or in part by a life tenant and corresponding remainderman or holder of a reversionary interest, all those interest holders must be joined as parties.

A plaintiff can include multiple properties in a partition action, each party under a separate count, even if one or more of the defendant-parties do not have an interest in all of the properties to be partitioned. Rule 1555. A defendant may assert a counterclaim for any property that the plaintiff did not include in the complaint even though both the plaintiff and the defendant have an interest in it. Rule 1556.

The language of the counterclaim rule (1566), referring to property “which the plaintiff might have included in the complaint,” is a bit ambiguous; it can be read to allow a counterclaim as to the property that the plaintiff *did* include in the complaint. Asserting such a counterclaim isn’t necessary to have the court address the counterclaimant’s issue in that property, but (unless the counterclaim is stricken or withdrawn) it prevents the plaintiff from avoiding the partition by simply discontinuing the action.

Two or more of the parties can elect to keep their shares together (but subject to the possibility that the ultimate plan of partition might require that the collective interests be liquidated). Rule 1565(a).

#### Issuance of Initial Order Directing Partition

For the reasons outlined earlier, a plaintiff who avers enough to establish standing as effectively stated enough to obtain an order directing partition. As long as the defendant acknowledges the co-ownership and the parties agree that all co-owners are parties (even if there might be some dispute as to the way in which the plaintiff has described the nature or extent of the ownership interests), a review of the pleadings will almost always establish a prima facie case that the property should be partitioned, although it might not be clear how the partition should be accomplished. In those rare cases where an issue must be resolved before the court is satisfied that partition is appropriate, the court can conduct a hearing to resolve the matter. Rule 1557. The court then issues an initial order, directing that the property be partitioned among the parties named in the order. *Id.*

#### Preliminary Conference

The court then directs the parties to participate in a preliminary conference to consider (i) whether the parties can agree upon a plan of partition, (ii) whether the issues can be simplified, and (iii) whether the court should appoint a master to carry out the order of partition. Rule 1558(a). The master can be appointed (at any time after the preliminary conference) to conduct one or more discrete tasks or, instead, to hear the entire matter and conduct a sale. Rule 1558(b).

#### Powers of the Master

---

caption.

Masters are appointed frequently. To carry out their obligations, masters may conduct hearings, conduct their own investigations, and appoint appraisers, title examiners, and other experts. Rule 1559.

The parties share equally the obligation to pay the fees of the master and of any experts retained by the master. Rule 1574.

### Interim Focus of the Court or Master

The court or any master appointed by the court must focus on two things:

- determining how the property might be partitioned, in accordance with the hierarchy noted above: physical division if possible, sale among parties if a physical division is not possible, and a sale to third parties if neither of the preferred approaches is possible or confirmable;
- valuation of the respective interests of the parties, after taking into consideration the credits or charges that are deemed to be appropriate after consideration of any presentations by the parties in support of or opposing them.

### Master's Report

A master, if appointed, must (under Rule 1569) prepare a report that sets forth, to the extent applicable and feasible, the master's recommendations to the court as to all of the proposed findings of fact that must eventually be embodied in the court's order (under Rule 1570(a)):

- (1) whether the property is capable of division, without prejudice to or spoiling the whole, into purparts proportionate in value to the interests of the co-tenants;
- (2) the number of purparts into which the property can be most advantageously divided, if partition proportionate in value to the interests of the parties cannot be made;
- (3) the value of the entire property and of the purparts;
- (4) the mortgages, liens, and other encumbrances or charges that affect the whole or any part of the property and the amount due thereon;
- (5) the credit which should be allowed or the charge which should be made in favor of or against any party because of use and occupancy of the property, taxes, rents or other amounts paid, services rendered, liabilities incurred, or benefits derived in connection therewith or therefrom;

(6) whether the interests of persons who have not appeared in the action, or of defendants who have elected to retain their shares together, shall remain undivided;

(7) whether the parties have accepted or rejected the allocation of the purparts or, if not and if the master therefore conducted one of the private auctions confined to the parties under Rules 1569(c) & 1567, whether the parties bid for the property; and

(8) whether a sale of the property or any purpart not confined to the parties is required and if so, whether a private or public sale will in its opinion yield a better price.

### Court's Decision and Order

The court must issue findings of fact (tracking the eight paragraphs, listed above, of Rule 1570(a) and enter an order, superseding the order entered under Rule 1557, that sets forth in detail how the partition is to be effected so as to result in each party receiving exactly or approximate the court's final valuation of that party's interest in the party.

If the partition is effected by a physical division of the property, the order must award the property or purparts to the parties, subject to any required owelty. And if owelty is required, the order must specify (i) the amount of the awards and charges that are necessary to preserve the respective interests of the parties, the purparts, and the parties for or against which the items are to be charged, (ii) the time of payment, and (ii) the manner, if any, of securing the payments.

If the partition of some or all of the property is to be effected by a private sale confined to the parties, a private sale not confined to the parties, or a public sale, the order shall set forth the sale terms.

The order must, when appropriate, address any special considerations presented for the protection of any life tenants, unborn and unascertained remaindermen, persons whose whereabouts are unknown, or other persons in interest with respect to the receipt of any interest.

### Notice of Proposed "Imperfect" Partition and Allotment of Purparts

If the proposed partition is not a "perfect partition" under Rule 1560(a) but rather a partition by allotment under Rule 1560(b) or a partition by sale under 1560(c), the master or court must provide advance notice of the terms to the parties so as to allow them to decide whether to exercise the right to object absolutely to the sale and, thus, to require that the property be sold at an open auction confined to them. Rule 1566.

### Procedure for Private Sales Confined to the Parties

The purparts at such an auction are offered both individually and collectively. Rule 1567. The purpose of offering the purparts both ways is to determine whether the total for the prevailing bids received for the purparts individually exceeds the prevailing bid for all of the purparts offered collectively. *Id.* The rules do not expressly require the court to select the approach that yields the higher price. But the rules prevent the court from accepting any individual bid for a purpart or any collective bid for the purparts if the bid is less than the court's previously fixed valuation for the purpart or purparts. Rule 1567.

#### Procedure for Public Sales or a Private Sale Not Confined to the Parties

If a private sale confined to the parties is not confirmed, the court will direct that the property be sold at a public sale or at a private sale not confined to the parties (i.e., a sale at which specified nonparties may bid). The order directing such a sale may include any terms that the court wishes to impose (consistent with its Rule 1570 order), including the power to require that the property be resold again if the public sale doesn't generate adequate proceeds. Rule 1572(a).

A lien creditor is entitled to "credit bid" at a public sale, paying (if the bid prevails) only the excess (if any) by which the bid exceeds the debt secured by the lien and charges assessed against the creditor. Rule 1572(c).

#### Application of Sale Proceeds To Discharge Liens and Interests

If a partition transaction that has been confirmed by the court has generated proceeds, and if property is subject to liens of interests that (under the terms of the partition order) must be satisfied and discharged with the proceeds, the court, on motion of one of the parties or of a person in interest (such as the interest holder), may appoint a trustee to ensure that the liens and interests are satisfied and discharged. Rule 1571.

#### Master's Post-Sale Report

If a sale has been conducted by a master, the master must submit a "return of sale" to the court, requesting that the court confirm it and authorize the master to execute such instruments as are necessary to effectuate or finalize it. Rule 1573(a).

The master must provide all parties and persons in interest with notice of the return. They may file objections to it within twenty days. Rule 1573(b).

If the court confirms the sale in whole or in part, the court must enter an appropriate order. Rule 1573(c). Parties who object to the order must do so by filing a motion for post-trial relief within ten days. *Id.*

#### Costs and Counsel Fees

To the extent that the master's fees and the fees of the experts retained by the master have not already been paid by the parties, they shall be taxed as costs. Rule 1574.

The court also has two powers with regard to payment of counsel fees of the parties (as opposed to the master's fees): the court may require that any excess sales proceeds (before distribution to the parties) be used to pay the reasonable counsel fees of the parties, and the court may require that the parties grant "charge[s] against the property to secure payment of such fees. *Id.* Even lawyers who have handled partition actions might be unaware of those powers, because they are set forth at the very end of the rules and regard a stage in the process that many partition actions (i.e., those that are settled) don't reach.