

REAL PROPERTY IN A DIVORCE

By K. Dean Kantaras and Jennifer H. Cavill

WHEN GOING THROUGH A divorce, one issue of contention can be what will happen to real property owned by the parties. If the parties are unable to agree about what to do with their real property, including the marital home, the Judge will decide when they enter an equitable distribution schedule. This schedule is where the Court orders the allocation of the assets and liabilities acquired by the parties during the marriage. However, one or both parties can request the Court to order the sale of real property and request that the sale proceeds be distributed between the parties. This is referred to as partition of property.

A request for partition must occur in the venue in which the real property is located. See §64.022, Florida Statute. This means that if the marital home is located in Pinellas County and one party wants the marital home sold, the request for partition must be made in Pinellas County. Usually, this is not an issue since typically the parties last resided together in the marital home and an action for dissolution of marriage must be brought in the county where the parties last resided together with the common intent to remain married. See *Smith v. Smith*, 430 So. 2d 521, 522 (Fla. 2nd DCA 1983). However, in a dissolution of marriage, the Court will be without jurisdiction to order the partition of real property when the real property is located in another county, such as a vacation home.

The party seeking a sale must include in his or her petition for dissolution of marriage certain information in order for the Court to have jurisdiction to order the sale of real property. According to §64.041, Florida Statute, the complaint for partition of real property must include the following: "...a description of the lands of which partition is demanded, the names and places of residence of the



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owners, joint tenants, tenants in common, coparceners, or other persons interested in the lands according to the best knowledge and belief of plaintiff, the quantity held by each, and such other matters, if any, as are necessary to enable the court to adjudicate the rights and interests of the party. If the names, residence or quantity of interest of any owner or claimant is unknown to plaintiff, this shall be stated. If the name is unknown, the action may proceed as though such unknown persons were named in the complaint." Failure to include this information in the complaint for partition of real property may subject the requesting party to a Motion to Dismiss by the other party for failure to state a cause of action.

Although the Court in one county will not be able to order the partition of real property located in another county, such as the example of a vacation home above, once the Court has jurisdiction over the parties for a divorce, the Court maintains

jurisdiction over the parties. In such cases, the Court may order one party to transfer an interest in real property located in another venue to the other party as part of equitable distribution. Therefore, the rights and interests in real property located outside of the county will still be addressed by the Court in a dissolution of marriage matter, just not through the sale of the real property. Additionally, a party may bring a separate action for partition, unconnected with a dissolution of marriage, in the county in which the property is located. For more details on partition of real property, see Chapter 64, Florida Statutes. ■■■

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