

COMPLAINT FOR PARTITION OF REAL PROPERTY

Sample Only
Use At Your Own Risk



INSTRUCTIONS: The following is a “cause of action” to be inserted after the heading of the complaint and common allegations. Include as many other causes of action as you have claims such as fraud, accounting, etc. Your “prayer” (request for relief) comes after your causes of action and must describe the relief you are seeking for each cause of action.

_____ **CAUSE OF ACTION**
(For _____ Against _____)

<>. The subject of this action is certain real property situated in _____ County, California

<>. The said real property is commonly known as _____, and more particularly described as follows:

[-----LEGAL DESCRIPTION-----]

<>. Plaintiff, _____, is the owner of _____[---specify proportionate amount of interest in the property , e.g., an undivided one-sixth interest (as shown in the title report attached to this complaint as Exhibit "A" and made a part of this complaint by reference)-----] in the above-mentioned property which is co-owned _____[----concurrently or in successive estates-----] by _____, herein named as defendant, and which plaintiff reasonably believes will be materially affected by this action.

<>. Defendant, _____, _____[----has or claims---] _____[---specify proportionate amount of interest in the property, e.g., an undivided one-sixth interest (as shown in the title report attached to this complaint as Exhibit "A" and made a part of this complaint by reference)-----] in the above-mentioned property which is co-owned _____[----

concurrently or in successive estates----] by plaintiff and which plaintiff reasonably believes will be materially affected by this action.

<>. [-----If plaintiff wishes partition as to all interests in the property, allege---- Plaintiff designates all persons unknown claiming any interests in the property as defendants DOES 1 Through ____, inclusive.----]

[-----EITHER-----]

<>. ____ who was co-owner of ____ [---specify nature and proportionate amount of interest----] in the property is deceased, as set out in the declaration of ____, filed with this complaint.

<>. On ____, 19____, ____ was duly appointed personal representative of ____, deceased, by order of the Superior Court of California, County of ____, No. ____, and is hereby joined as defendant in this action.

[-----OR-----]

<>. ____ who was a coowner of ____ [---specify nature and proportionate amount of interest----] in the property is ____ [-----deceased or believed to be deceased----] and plaintiff knows of no personal representative, as set out in the declaration of ____, filed with this complaint.

<>. The plaintiff hereby joins as defendants the testate and intestate successors of ____, ____ [---deceased or believed to be deceased----], and all persons claiming by, through, or under ____ [---said decedent or such person----].

[-----CONTINUE-----]

<>. [----If plaintiff has knowledge of an unrecorded claim or interest in the property, allege:---- Defendant, ____, is the owner of ____[---specify proportionate amount of interest in property-----] which is unrecorded and coowned by plaintiff ____ [----concurrently or in successive estates----] and which plaintiff reasonably believes will be materially affected by this action.

[-----EITHER -- if there are NO LIENS or ENCUMBRANCES. -----]

<>. There are no liens or encumbrances on the property appearing of record or otherwise known to plaintiff or apparent from an inspection of the property.

[-----OR---- if there are liens and encumbrances-----]

<>. The liens and encumbrances on the property appearing of record or otherwise known to plaintiff or apparent from an inspection of the property and which plaintiff reasonably believes will be materially affected by this action are as follows: ____ [---set out liens or encumbrances including those belonging to plaintiff, in tabular form if there are many, showing name, nature of interest, and amounts remaining due---].

<>. [----If plaintiff has procured a title report allege: ----Prior to the commencement of this action, it was necessary for plaintiff to procure, and ____ procured a title report. Plaintiff incurred the expense of \$____ in procuring the title report, and that sum is the reasonable expense thereof. The title report is, and will be, kept available for inspection, copying, and use by the parties at ____, California. A copy of the title report is attached hereto as Exhibit ____ and made a part of this complaint.-----]

<>. [----If ownership, share or quantity of interest of person having or claiming

interest is unknown, allege: ---- The ____ [---ownership or share or quantity---] of the interest claimed by ____ is ____ [---unknown or uncertain or contingent---]. [----If lack of knowledge, uncertainty, or contingency caused by transfer to unborn or unascertained person or class member, or by transfer in form of contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, add: ---So far as is known to plaintiff, the following person(s)____ in being would be entitled to ownership of the interest if the contingency on which the right of such person(s)____ depends occurred prior to the commencement of this action: ____ [---list names, ages, birthdates of any minors, and legal disabilities, if any for each such person, e.g. Mary Smith, a minor 12 years old, born October 22, 19____.-----]

<>. [-----If parties agree to partition by sale, allege:-----Plaintiff, ____, and defendant ____ have agreed to partition by sale of the property in question [----and said agreement is attached to this complaint as Exhibit ____ and made a part of this complaint by reference----]

<>. [----If plaintiff seeking partition by sale without agreement, allege: -----Partition by sale of the property is more equitable than division in kind of the property because ____ [---set forth facts showing that sale is more equitable, e.g., since the property is ____, it cannot be physically divided----].

<>. [-----If partition of successive estates is involved, allege: ---- Partition of the successive estates in the property is in the best interests of all the parties because ____ [---set forth facts showing that such partition is in the best interests of the parties, e.g., the property is so old that it requires extraordinary repairs, the expense of which has become unduly burdensome to the holder of the possessory interest.-----]

<>. This action is brought and partition is sought herein, for the common benefit of the parties, to preserve and secure to each of them ____ respective interest and rights in the property, and plaintiff has incurred, and will incur, costs of partition herein, including reasonable attorney's fees, for the common benefit of the parties hereto, in

_____[----set forth either the approximate sum or state an amount not yet ascertainable-
----].

[---- OPTIONAL - FOR ACCOUNTING ----]

<>. Between ____, 19__ and ____, 19__, defendant ____[---specify facts, e.g.,
collected and received from the tenants in possession of the real property all the rents
and profits from the real property, amounting to at least \$_____ -----].

<>. Plaintiff has heretofore demanded of defendant that ____ account to plaintiff
for any and all sums so received by ____, and that ____ pay to plaintiff ____ share
thereof, but defendant has failed and refused to make such accounting or to pay to
plaintiff the sums due to ____ and still fails and refuses to do so.

<>. Due to defendant's refusal to make an accounting of _____ or to pay to
plaintiff the sums due ____, as alleged above, ____[----specify effect, e.g., the proceeds
from future rents and profits of said real property are in danger of being lost or
misappropriated by defendant----] unless a receiver is appointed by the court to _____[--
--specify, e.g., take possession of the real property and to collect the rents until this
action is finally determined----].

WHEREFORE, plaintiff__ pray__ judgment against defendant__ and each of
them, as follows:

1. For partition ____[---in kind or by sale----] of the ____[---specify present or
future or both----] interests in the property according to the respective rights of the
parties hereto;

2. For the expense reasonably incurred by plaintiff in obtaining a title report of the
real property ____[---in an amount not yet ascertainable----], with interest thereon from
____, 19__[----date of commencement of action];

3. That the costs of partition, and of this action, including reasonable counsel fees expended by plaintiff and defendants for the common benefit, fees and expenses of referees, and other disbursements be ordered paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein and more particularly that plaintiff be reimbursed for sums advanced in this regard beyond _____ just proportion thereof, and that the costs be included and specified in the judgment and become a lien on the several shares of the parties;

4. For the costs of partition, including attorney's fees, necessarily incurred by a party for the common benefit in prosecuting or defendant other actions or other proceedings for the protection, confirmation, or perfection of title, setting the boundaries, or making a survey of the property, with interest thereon from ____, 19__ [----date of making expenditures----]; and

5. For such other and further relief as the court may deem proper.

Date: _____
_____ [Plaintiff's name]
Plaintiff *In Pro Per*

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