

## **FAMILY COURT COMMUNITY PROPERTY PARTITION GUIDE**

### **A. Contested Judicial Partitions of Community Property**

Judicial Partitions are governed by La. R.S. 9:2801, et seq.

### **B. Uncontested Judicial Partitions of Community Property**

The Court has reviewed many pleadings and judgments over the past years which have been prepared and filed in an attempt to judicially partition the former community of acquets and gains by consent. Some of these filings are deficient in form and substance and consequently are not acceptable to be submitted for signature by the Judge. The staff attorneys spend much time communicating the defects that need to be corrected to the attorney or party. This also can result in delay and further costs being incurred.

There is a great deal of confusion concerning the proper procedure and pleadings necessary to accomplish an uncontested judicial partition of community that prevents problems in the future. This is meant to serve as a guide as to what is necessary for an uncontested community property partition to be made a judgment of the Court.

#### **1. A Partition Proceeding Must be Pending in Order for the Court to Judicially Partition the Former Community of Acquets and Gains.**

##### **a. Pleading for Partition**

A pleading must have been filed in the record that places the partition of the community regime at issue. Otherwise, the Court is issuing an advisory opinion on what is actually an extrajudicial partition between the parties. Courts are without jurisdiction to issue advisory opinions and may only review matters that are justiciable.

For example, the following allegation in a pleading **does not** serve to put the partition of the community at issue:

The spouses have acquired community property during the existence of the marriage and they desire that a partition of the community of acquets and gains be relegated to such future proceedings as may be necessary.

The following allegation **does** serve to put the partition of the community at issue:

The spouses have acquired community property during the existence of the marriage and they desire that the community of acquets and gains be partitioned in accordance with La. R.S. 9:2801.

Further, the prayer of the petition should seek a partition of the community of acquets and gains. It is not necessary that the Court issue an order requiring the parties to file their detailed descriptive lists in accordance with La. R.S. 9:2801(A)(1)(a) in order for the partition of the community to be at issue.

Further, La. R.S. 9:2801 allows that the partition action may be filed “as an incident of the action that would result in a termination of the matrimonial regime or upon termination of the matrimonial regime or thereafter.” There is no prohibition against a party praying for a judicial partition of the community in the initial petition for divorce.

**b. Request for Accounting/Contributions to Education**

Though not required, you may wish to pray for an accounting pursuant to La. C.C. Art. 2369, since an obligation for an accounting prescribes in three (3) years from the date of termination of the community property regime. This would prevent the obligation to account from prescribing in the event the partition matter is pending for more than three (3) years from the date of termination of the community property regime. It may also be prudent for a spouse to assert in the prayer a claim for contributions to education or training of the other spouse in accordance with La. C.C. Art. 121, et seq., since this claim likewise prescribes three (3) years from the date of signing of the judgment of divorce or declaration of nullity of the marriage.

**c. Prayer for Partition**

Accordingly, an all-inclusive prayer for partition and to settle the claims arising out of the marriage would be substantially similar to the following:

Petitioner prays that after due and proper proceedings are had, that there be judgment herein partitioning the community of acquets and gains formerly existing between the parties, and adjudicating any and all other claims arising from the former community or the former matrimonial regime, including but not limited to claims for reimbursements arising both during and after the existence of the community regime, an accounting in accordance with La. C.C. Art. 2369, and for contributions to education or training of the defendant pursuant to La. C.C. Art. 121.

**2. No Judgment of Partition Shall be Rendered Unless it is Rendered in Conjunction with, or Subsequent to, the Judgment which has the Effect of Terminating the Matrimonial Regime. (See La. C.C. Art. 2336 and R.S. 9:2802).**

It is recommended that a judgment partitioning the former community of acquets and gains contain a recitation that the community property regime has been terminated, together with the date of termination. Though this is not required, attorneys and/or for self-represented parties should understand that if they fail to include this language in their judgment and/or stipulation, the execution of their partition judgment will be delayed since the Judge’s staff attorney will have to

review the file from the Clerk's Office before the judgment can be rendered.

### **3. The Partition Judgment Must be in Proper Form.**

There are several ways for a judicial partition to be properly drafted. Attached hereto is a sample Judgment of Partition (Example 1), which sets forth a judgment of partition by joint stipulation of the parties. The Court would also accept a separate written joint stipulation together with a partition judgment that mirrors that written stipulation. In addition, there are other ways to properly draft a partition judgment. For instance, a Community Property Partition Agreement can be attached to and made a part of a judgment dismissing the partition action (Example 2).

#### **a. Court Homologation/Approval/Review**

The Court will not sign any judgment that “approves and homologates” or “homologates as being fair and equitable to both parties” an attached community property partition, or that in any way homologates a community property partition. It is no longer necessary to appear with your clients to “homologate” a community property partition, as the Court will no longer “homologate” partitions.

La. C.C. Art. 2369.8 provides that La. R.S. 9:2801 is the exclusive procedure by which the former community of acquets and gains may be partitioned. This statute was originally enacted by the Legislature in 1982, more than twenty (20) years ago, and contains no provisions concerning homologation. Homologation is found in the Louisiana Code of Civil Procedure under the heading “Partition Between Co-Owners”, Art. 4601, et seq. Prior to 1982, this was the procedure to partition all co-owned property, including a former community of acquets and gains, and these articles provide for the appointment of a notary public by the Court to “make the partition in accordance with law”. When the partition has been completed by the notary, he is required to file his *procès verbal* of the partition, or a copy thereof, with the Court. Any party may then rule all the other parties into court to show cause why the partition should not be “homologated or rejected”. Homologation has to do with the acceptance or the rejection of the partition proposed by the court appointed notary public. There is no procedure by which a community property partition can be “homologated” or accepted by the Court under R.S. 9:2801.

The Court will not sign the bottom of Community Property Partitions after the signature lines of the parties with language such as “Reviewed and Approved in \_\_\_\_\_, Louisiana, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.” The Court does not have the right to “review and approve” partitions. For the Court to enter a judicial partition without an actual adjudication resulting from a trial, there must be a stipulation of the parties. Otherwise, the Court is issuing an advisory opinion concerning what is actually an extrajudicial partition between the parties.

#### **b. Form for Transfer of Immovable Property**

The Court will not execute a partition judgment that is not in proper form. For instance, La.

C.C.P. Arts. 1919 and 2089 require that all judgments and decrees which affect title to immovable property shall describe the immovable property affected with particularity. The purpose of these articles is to insure that the public in general and title examiners, successful litigants, officials charged with executions of judgments and surveyors in particular, can accurately deal with the immovable property. It is well settled that a municipal address is not a proper legal description of immovable property and the Court will not sign partition judgments unless appropriate immovable property descriptions are contained therein.

**c. Judicial Mortgage**

Further, any sums of money owed under a judicial partition will constitute a judicial mortgage against the obligor spouse which encumbers any property received by that spouse. Upon the payment of the money portion of the partition judgment, the obligor spouse is entitled to receive from the obligee spouse an Act of Partial Cancellation of the Judgment that is to be recorded in the mortgage records of the Clerk of Court's office and which serves to partially cancel and erase the partition judgment insofar and only insofar as it pertains to the money judgment against the obligor.

**4. A Community Property Partition may be "Extrajudicial", that is a Written Agreement Between the Parties that is Not Made a Judgment of the Court.**

The main reason parties seek to obtain a judicial partition, as opposed to an extrajudicial partition, is in an attempt to avoid lesion beyond moiety. If lesion is not a problem, then an extrajudicial partition will serve the parties just as well as a partition by judgment and it will save the parties on court costs. Also, an extrajudicial partition may be perfected by the parties at any time, even prior to the termination of the community regime. See La. C.C. Art. 2336.

It should be noted that an extrajudicial partition which includes immovable property must be made by authentic act, or by act under private signature, preferably acknowledged, and it must be recorded in the conveyance records to be effective against third parties. See La. C.C. Art. 1839. Also, the Notary passing the extrajudicial partition should comply with the requirements of La. R.S. 35:12. The agreement should also contain a waiver of all liens, privileges, resolatory conditions, and the right of dissolution for non-payment of consideration.

When community property partitions are filed that do not meet the requirements of law, a letter from the Judge's staff attorney will be issued to the party/attorney submitting same, citing specific deficiencies.

(22<sup>nd</sup> Judicial District Court, revised September 23, 2019).

(This Information Sheet has been adapted and reprinted with permission of the 15<sup>th</sup> Judicial District Court © 2019)