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# Partition (CCP §§ 872.210–874.323)

Grand Park Law Group · 2026



## II. Partition (CCP §§ 872.210–874.323)

Partition is the statutory remedy by which cotenants of real property compel division or sale. It is, with narrow exceptions, an **absolute right** — not an equitable remedy subject to balancing.

### A. Partition by Sale vs. In Kind

Section 872.810 establishes the presumption in favor of physical division ("partition in kind"), and § 872.820 authorizes partition by sale where the court finds sale would be "more equitable than division." In practice, virtually all partitions of single-family residences and condominium units result in sale, because physical division would destroy value. Partition in kind survives mainly for raw land and large agricultural parcels.

The court appoints a **referee** under § 873.010 to manage the sale or division. Referee fees, broker commissions, and litigation expenses are charged against the proceeds in proportion to ownership interests under § 874.040, which gives the trial court broad discretion to apportion costs equitably.

### B. The Right to Partition and Defenses

The principal defenses are (i) a written waiver of partition (rare and narrowly construed), (ii) an enforceable agreement to hold property jointly for a defined purpose (e.g., a partnership), and (iii) equitable estoppel where the moving cotenant has induced reliance. Courts are reluctant to read implied waivers into vague co-ownership arrangements; the burden of proof rests on the party resisting partition.


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C. **Accounting Between Cotenants**

Section 872.140 codifies the equitable accounting that often dominates a partition trial. Recoverable items include:

- **Mortgage principal and interest** paid by one cotenant beyond their share;
- **Property taxes and insurance**;
- **Necessary repairs** (but not unilateral improvements absent enhancement of value);
- **Fair rental value offsets** where one cotenant has had exclusive possession (typically requiring proof of ouster); and
- **Improvements** to the extent they enhance value at the time of sale.

D. **The Uniform Partition of Heirs Property Act (CCP §§ 874.311–874.323)**

California first adopted UPHPA via AB 633 (operative Jan. 1, 2022) and then expanded it as the Partition of Real Property Act via AB 2245 (operative Jan. 1, 2023). The Act modifies traditional partition law for **heirs property** — real property held in tenancy in common where (1) there is no recorded agreement among all cotenants governing partition, (2) at least one cotenant acquired title from a relative, and (3) at least 20% of the interests are held by relatives, by an individual who acquired title from a relative, or 20% or more of the cotenants are relatives. CCP § 874.312.

When UPHPA applies, the court must:

1. Order an **independent appraisal** under § 874.316;
2. Offer the **cotenants a right of first refusal** to buy out the partitioning cotenant at the appraised value (§ 874.317);
3. If buyout is declined, prefer **partition in kind** over sale (§ 874.318); and
4. If sale is necessary, conduct it as an **open-market sale** with a broker, rather than an auction, unless an auction would be more economically advantageous (§ 874.320).

UPHPA exists to address the historical pattern of family land — particularly in communities of color — being lost to opportunistic third-party purchasers at auction. GPLG should screen every partition intake for UPHPA applicability; the procedural protections substantially change leverage.

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