



## A Case for a Partition Action? Breaking Up Is Hard to Do: Especially if You Own Real Estate Together and Aren't Married

by John Joseph of Joseph & Joseph.

Breaking up any type of relationship can be difficult, but add the ownership of real estate to the mix and it can become even more troublesome. Domestic Relations Court has the ability to decide the equities and disposition of real estate between separating or divorcing spouses, but what about unmarried individuals? Where can they turn to resolve differences over the ownership and disposition of jointly owned real estate?

This has been a recurring problem that this firm has been called upon to resolve many times both in the heterosexual and same sex relationships. The issues are the same. If we are lucky enough to represent one of the parties prior to the acquisition of the real estate, we are able to make recommendations, such as the preparation of an agreement regarding the disposition of the real estate or the use of various legal entities to hold title. Unfortunately, more often than not, we are not representing one of the parties prior to ownership, and are presented with the problem when the break up is occurring between the joint owners. Assuming everything else is equal, if the parties are in agreement, resolving it is likely to be

easy. Resolution becomes a matter of dealing with the conveyance, any existing mortgage, and dividing of the equity in the property. However, with most breakups, agreement between the parties has long past. We then must determine the goals of each of the parties, and devise strategies to obtain the best outcome. When all else fails, litigation may be the course that needs to be followed.

The law can be slow in evolving to fit the circumstances that exist in present day society. That is the case with resolving disputes over unmarried joint owners. A Partition Action is a law suit which has its beginnings in the common law. It was used in the days that farms passed down from the farmer to his sons. When the sons could not agree on how to run the farm together, one or more of them could commence a partition action, asking the court to fairly divide the farm between the brothers. Partition Action exists in the codified law of today. However, it is still cloaked in the garb of the common law, with

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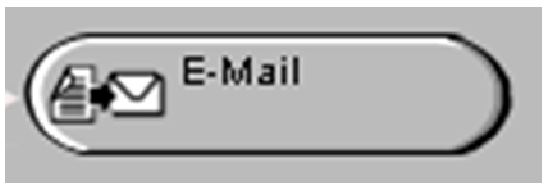
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# Tech Tip: In 5 simple steps our subscribers can email scanned documents from our computer lab for FREE!

By Julie Koehne, Systems Librarian

## Step 1:

Load your document into the top feeder of printer.

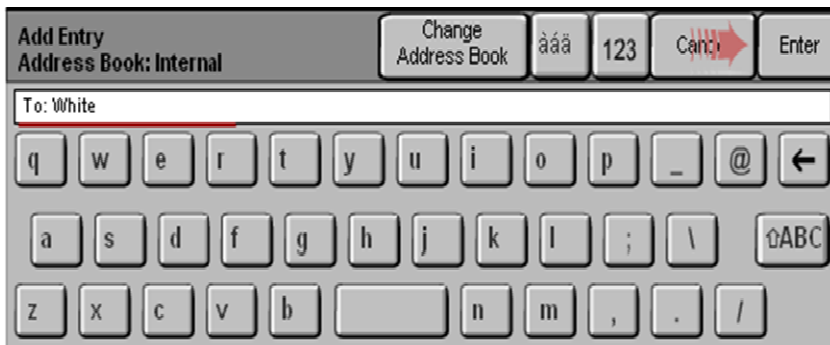
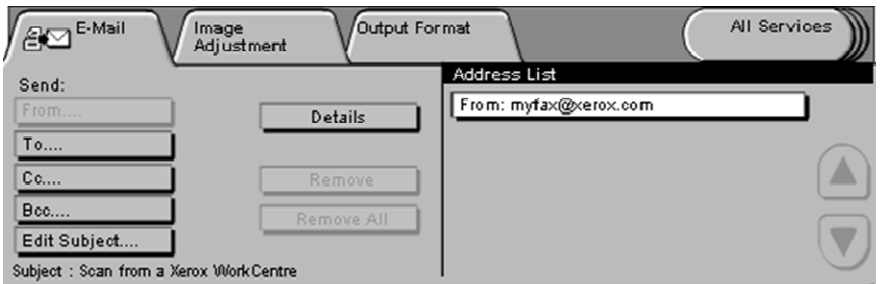


## Step 2:

Select email by touching the screen.

## Step 3:

Select To: in the Send: field on the left of the screen.

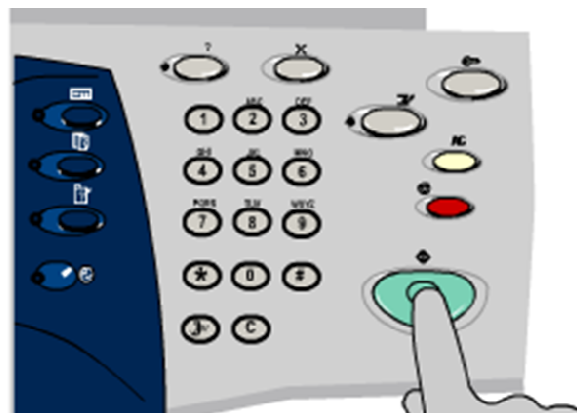


## Step 4:

Input full email address of the recipient using the keyboard, then select Enter in the upper right hand corner of screen.

## Step 5:

Press the green start button and your document will be sent as a PDF attachment.



## You and the Legal System: Qualifying for Nursing Home Medicaid

Moshe Y. Toron, Esq., a Cincinnati attorney who practices in the area of elder care, is the next speaker in our *You and the Legal System* series. He will speak about nursing home Medicaid on Friday, August 19, 2011 at 12:00 noon at the Law Library. The program is free to the public. To register, call 513.946.5300.

Mr. Toron will address these points:

- How you can be impoverished by Nursing Home costs
- How to avoid spousal impoverishment
- How proper planning can protect your assets
- Why "traditional estate planning" won't help with Nursing Home costs
- Difference between immediate need and long term planning
- Why regular Living Trusts can ruin your Nursing Home planning
- What documents you need to plan properly
- Medicaid Estate Recovery
- How to plan for the recently enacted Federal and Ohio laws that make it harder to qualify for Medicaid benefits

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may also want to pass along the program announcement to clients, staff, and community organizations. If you would like flyers to distribute, please contact law librarian [Mary Jenkins](#) at 513.946.5300.

*You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Brett Goodson

will present on Personal Injury on September 16; details forthcoming.

## Upcoming CLE

### Ten Things You and Your Client Need to Know About Long Term Care Legal Issues

**Tuesday, September 13**

Noon-1pm

Presenters Mary Ann Jacobs and James T. O'Reilly will address legal issues that attorneys should consider when addressing elder clients' needs related to nursing homes and other long term care. Among the topics to be addressed:

- Financial considerations
- Categories of care
- Residency agreements
- Patients' rights and responsibilities
- Credentialing and certification of medical staff
- Assault and other incidents
- Litigation and liability issues
- Documentation needed

Approved for 1.0 hour of general CLE credit in Ohio and Kentucky.

Free to law library subscribers; \$50 for nonsubscribers.

To register, contact Mary Ann at the Law Library or at 513.946.5300 or via email at [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org)

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a focus of dividing the farm amongst joint owners. Unfortunately, a Partition Action is like an old remedy for a new disease, and often does not work perfectly in the urban setting. That is, not unless you want the court to divide an urban house in half like in the movie War of the Roses, with Michael Douglas and Kathleen Turner.

A Partition Action can ask that the property be sold if it is determined that it cannot be divided. Certainly this is the usual case for a residential urban property. Each of the parties has an opportunity to purchase it for the appraised value. If neither elects to do so, the property is sold at auction.

We have utilized the Partition Action to force the issue with a recalcitrant party who refuses to act. The good news for the party seeking this remedy is that the court can award attorney fees to the Plaintiff who commences the action.

We find that each client's case requires thought and analysis to develop the right strategy to seek the desired result. Often we will combine the Partition Action with other counts containing other legal theories. I analogize this to a chemotherapy cocktail to kill the specific strain of cancer. Clients going through this process with a terminating relationship seem to like this analogy for some reason.

A Partition Action should not be filed by a novice. A thorough understanding of the process, and the consequences and risks must be understood. Our experience is that the Court itself does not know or understand this type of case and must be educated through the process. Although there can never be a guarantee that it will happen in every case, the good news is that we have seen most parties coming to their senses when this action gets filed, and the differences are resolved.

### **Selected Statutes Governing Partition Actions:**

*Persons can be compelled to partition their land: § 5307.01*

Tenants in common, survivorship tenants, and coparceners, of any estate in lands, tenements, or hereditaments within the state, may be compelled to make or suffer partition thereof as provided in sections 5307.01 to 5307.25 of the Revised Code.

*The content of the petition is governed by statute: § 5307.03.*

A person entitled to partition of an estate may file his petition therefor in the court of common pleas, setting forth the nature of his title, a pertinent description of the lands, tenements, or hereditaments of which partition is demanded, and naming each tenant in common, coparcener, or other person interested therein, as defendant.

*The Court orders partition: § 5307.04.*

If the court of common pleas finds that the plaintiff in an action for partition has a legal right to any part of the estate, it shall order partition of the estate in favor of the plaintiff or all interested parties, appoint one suitable disinterested person to be the commissioner to make the partition, and issue a writ of partition. The court on its own motion may, and upon motion of a party or any other interested person shall, appoint one or two additional suitable persons to be commissioners. If the estate to be partitioned extends beyond the county in which the action is commenced, the court may appoint a separate commissioner or commissioners, not to exceed three, to make the partition of that portion of the estate located in the other county.

*Survivorship tenants are treated as tenants in common: § 5307.041.*

If partition is granted among survivorship tenants, the court shall determine the share to which each is entitled as if the tenants were tenants in common.

*Appointed commissioners equitably divide the land: § 5307.06.*

In making a partition, the commissioner or commissioners shall view and examine the estate and, on their oaths and having due

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regard to the improvements, situation, and quality of the different parts, set it apart in lots that will be most advantageous and equitable. If the commissioner or commissioners set the estate apart in lots, it shall be surveyed and platted in compliance with sections 711.001 to 711.15 of the Revised Code and with rules adopted pursuant to those sections.

*The Parties can agree to Partition the land amicably:§ 5307.08.*

Before a writ of partition is issued under section 5307.04 of the Revised Code, the person of whom partition is demanded may appear in the court of common pleas in person or by attorney and consent to a partition of the estate agreeable to the prayer and facts set forth in the petition, which amicable partition, when made and recorded, shall be valid and binding between the parties to the partition. In cases in which a requested partition is consented to under this section and in all cases in which the lands are divided among the parties by the commissioner or commissioners, the court shall order the sheriff to execute and deliver a deed to each person entitled to a deed for the portion set off and assigned to the person. Land divided pursuant to this section shall be surveyed and platted in compliance with sections 711.001 to 711.15 of the Revised Code and with rules adopted pursuant to those sections.

*If the property cannot be divided, it is appraised and a party may elect to take it at the appraised value:§ 5307.09.*

When the commissioner or commissioners are of opinion that the estate cannot be divided according to the demand of the writ of partition without manifest injury to its value, the commissioner or commissioners shall return that fact to the court of common pleas with a just valuation of the estate. If the court approves the return and if one or more of the parties elects to take the estate at the appraised value, it shall be adjudged to them, upon their paying to the other parties their proportion of its appraised value, according to their respective rights, or securing it as

provided in section 5307.10 of the Revised Code.

*If the parties do not elect to take the property it can be sold at public auction:§ 5307.11.*

If no party elects to take the estate, at the insistence of a party, the court of common pleas may order a sale of the estate at public auction by one of the following:

- (A) The sheriff who executed the writ of partition or the sheriff's successor in office;
- (B) An auctioneer who is licensed under Chapter 4707. of the Revised Code and who is qualified under section 4707.021 of the Revised Code to conduct an auction of real property.

*The sale is similar to a foreclosure sale, and cannot be sold for less than two thirds of the appraised value:§ 5307.12.*

(A) A sale of an estate under section 5307.11 of the Revised Code shall be made as follows:

- (1) If the sale is made by a sheriff, the sale shall be made at the door of the courthouse, unless for good cause the court of common pleas directs it to be made on the premises. The sale shall be conducted as upon execution, except that it is unnecessary to appraise the estate.
  - (2) If the sale is made by a licensed auctioneer, the sale shall be made pursuant to Chapter 4707 of the Revised Code.
- (B) No property shall be sold for less than two thirds of the value returned by the commissioner or commissioners.

*One party may obtain his or her share of rents and profits of the property received by the other party. § 5307.21.*

One tenant in common, or coparcener, may recover from another tenant in common, or coparcener, his share of rents and profits received by such tenant in common or coparcener from the estate, according to the justice and equity of the case.

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## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

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Professional reference service by our law librarians, available via e-mail, telephone, and in person

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Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

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One coparcener may maintain an action of waste against another coparcener. No coparcener shall have any privileges over another coparcener, in any election, division, partition, or matter to be made or done, concerning lands which have descended. For more information contact John Joseph.

([johnjoseph@josephandjoseph.com](mailto:johnjoseph@josephandjoseph.com))

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## Technical Services Librarian Search

As we noted in last month's issue, we are conducting a search for a new technical services librarian, following Akram Sadeghi Pari's departure to take a job at the University of Cincinnati. We posted the position widely. Applicants will be reviewed by the search committee in late July with interviews scheduled throughout August. Are you wondering what a technical services librarian does? The technical services librarian is responsible for the management and administration of technical services processes and staff to ensure efficient and accurate access to the Law Library's resources. Primary duties include managing the creation, editing, updating, and enhancement of catalog, authority, acquisitions, and serials records for the Law Library's collection, including electronic resources, and managing the organization of the physical collection. With luck, we will introduce you to our new librarian in our next issue.

## Conference Rooms

Subscribers may reserve the library's conference rooms, located in the main room. Each room includes a table, some chairs, and a speaker phone. While they are not soundproof, they do provide a relatively private location for meetings or quiet study. To reserve a room for an hour or two, please speak with Mary Ann at 513.946.5300.

## Library Materials on Elder Law

Consider these resources for your research on elder law issues. In addition to the books listed here, the Law Library offers its subscribers online 24/7 access to Aspen's *Advising the Elderly*, the *CCH Social Security Reporter*, and the *Social Security and Medicaid Answer Book*.

Alive and kicking : legal advice for boomers / Kenney F. Hegland, Robert B. Fleming.  
KF3823.Z9 H44 2007

Elder law answer book / Robert B. Fleming, Lisa Nachmias Davis.  
KF390.A4 F58 2010

Elder law handbook / Daniel P. Seink, editor.  
KFO91.A3 E42 2010

Everyday law for seniors / Lawrence A. Frolik and Linda S. Whitton.  
KF390.A4 F7535 2010

Law, explanation and analysis of the Patient Protection and Affordable Care Act : including Reconciliation Act impact / CCH.  
KF6276.6201 .A369 2010

Litigating the nursing home case / James T. O'Reilly.  
KF3826.N8 O74 2009

Medicaid: Planning, Application and Appeals [in Ohio]  
KFO341.5 .P65 M432 2010

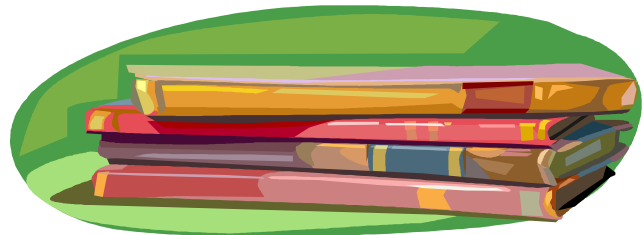
Ohio elder law / by Margaret H. Kreiner.  
KFO91.A3 O365 2010

Ohio elder law institute.  
KFO91.A3 O38 2011

The Ohio Medicaid manual : the how-to manual for attorneys providing the tools to plan in a post DRA 2005 world / Richard T. Taps, Rhonda J. Cress.  
KFO341.5.P65 T36 2008

## Withdrawn Materials

When the Law Library discards a book, it is generally because a new edition has arrived or the item was outdated. Library policy and state law requires that we post items or groups of items on the county surplus auction unless the value is minimal. If discarded items are of interest to you, check the auction site regularly at <http://www.hamiltoncountyohioauction.com>. We still have a cart of free books in the foyer by the elevator.



## Library Offers New Resource for Legal Information

We have extended the range of online legal information sources for patrons' use with the addition of EBSCO's Legal Information Reference Center. It is available for on- and off-site use by law library subscribers and at public workstations in the Law Library. Here is EBSCO's product description:

"*Legal Information Reference Center* contains hundreds of full-text publications and thousands of legal forms. The full-text legal reference books are provided through Nolo, the nation's oldest and most-respected provider of legal information for consumers and small businesses."

## Upcoming Events

August 19: You and the Legal System: Qualifying for Nursing Home Medicaid

September 13: CLE: Ten Things You and Your Client Need to Know About Long Term Care Legal Issues

September 16: You and the Legal System: Personal Injury



## August 2011 Law Library Newsletter

- Partition Actions
- Upcoming CLE: Elder Law
- Tech Tip: Emailing Scanned Documents
- New Legal Information Resource

### INSIDE THIS MONTH

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