

BULLETIN

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Partition in Joint Ownership

A property can have a single owner or multiple owners. When a property has multiple owners, it is referred to as shared ownership or joint ownership. Shared ownership, also known as co-ownership, means that several individuals own specific shares in an undivided property. Unless otherwise agreed by the co-owners, shares in shared ownership are considered equal. However, under Article 688 of the Turkish Civil Code ("TCC"), it is not possible to determine which part belongs to which partner due to the undivided nature of the property. Therefore, the property subject to shared ownership is considered as a single ownership because it cannot be physically divided. Single ownership, in this context, refers to the collective ownership of the co-owners.

In shared ownership, each co-owner has rights and responsibilities regarding their own share. Shares can be transferred, used as collateral, or subject to enforcement by creditors (TCC Article 688/3).

Co-owners can make different arrangements among themselves regarding the use, management, and other matters related to the shared property by unanimous agreement. The agreement signed by the co-owners together must also be terminated by unanimous agreement.

The Rights of Co-owners to Take Measures:

All co-owners have the authority to take immediate and necessary measures concerning the shared property without requiring the consent of other co-owners. Under Article 689 of the TCC, co-owners have the right to take necessary measures to protect the usability and value of the shared property and can request the court to take measures if needed. Additionally, each co-owner has the authority to take immediate measures necessary to protect the property from any danger or to prevent an increase in damage (TCC Article 689).

Furthermore, it is essential to note that ordinary, important, and extraordinary measures related to the shared property have different procedures under the law.

Ordinary management measures can be performed by each co-owner individually, especially small repairs and agricultural activities (TCC Article 690).

Important management measures, such as changing the management method or type of farming, entering into or terminating ordinary lease agreements or crop-sharing agreements, require a decision by a majority of shares and co-owners (TCC Article 691). Measures exceeding the scope of ordinary management, such as maintenance, repair, and construction works necessary for preserving the value or suitability of the shared property, also require the same majority (TCC Article 691).

Extraordinary management measures involve changing the specific purpose of the shared property, engaging in construction work exceeding ordinary practices, or making disposals over the entire shared property. For such measures, unanimous agreement of all co-owners is required unless otherwise agreed upon (TCC Article 692/1). Extraordinary management measures include actions like building on the property, which is beyond ordinary activities. In these cases, the consent of all co-owners is necessary. In other words, extraordinary management measures relate to changing the specific purpose for which the property is used, undertaking construction work beyond ordinary practices, or making disposals over the entire shared property.

Can a Co-owner lease the real property in Joint Ownership?

Lease Agreements concluded without the consent of the majority of shares and co-owners is not valid. This principle is mentioned in both Article 691 of the TCC and a Judgment of the Court of Cassation (06.05.1955).

Partition Process:

Partition is a process in which a property that is registered as a single parcel in the land registry is divided into smaller parcels in line with a map prepared in accordance with the zoning plan, and each parcel is registered separately, enabling its independent and separate ownership. From a legal standpoint, the partition process is an action carried out by the administration upon the request of the owner or owners of the property.

Partition processes can be initiated upon the request of the property owner(s) or, in certain cases, through a court order or by the administration. It is essential to note that during the partition process, all co-owners must apply with their duly authorized representatives.

In the case of identifying a risky building or placing a risk annotation on a property in the land registry due to the presence of risky buildings, the administration or the Ministry can make decisions or have decisions made without the need for consent regarding changes in kind, merging, partitioning, abandonment, establishment, and registration operations in the application area of risk areas or parcels with risky buildings, as regulated by the law.

In conclusion, a co-owner in a shared ownership of a property, shall resolve any disputes between co-owners before transferring, selling, or undertaking construction. One way to resolve disputes among co-owners is through partition. Disputes should be addressed first by taking measures that help maintain co-ownership effectively.