

6)

The Rhodes Law Firm

43 Whitehall Lane

Sparta Columbia

MEMORANDUM

Fr: Roberta Rhodes

To: Joan Tate

Date: July 29, 2025

Re: Advice on a Partition Action

Dear Joan Tate, below please find my advice for you whether you can force sale of the entire property or divide property into three parcels and whether Crystal will be able to recover.

### Question 1

#### Forced Sale

If cotenants cannot agree on how to divide their co-owned property, one cotenant has the right to file a partition action to compel a division of the property. CPC s. 1020 According to the statute the trial court must order a physical division of the property unless "physical division would result in economic harm to the parties or is otherwise impracticable. Id. This provision creates a rebuttable presumption in favor of physical division, which may be rebutted in at least two ways.

#### Little to No Economic Harm

The presumption may be overcome by proof that any one parcel out of the divided property would have little to no economic value. *Timmons*.

In your case we confirmed that the property could be readily be divided into three separate parcels: one parcel on the corner of Corinth Road and Sky Street that includes the house and garage; a wooded area in the of the house abutting Skyes St.; and open land next to the house on Corinth Road. The house occupies a somewhat smaller area than the two other parcels, which each roughly equal in size. The value of the parcel with the house and garage comes to roughly \$200,000. The combined value of the other two parcels together totals \$250,000 : \$130,000 for open land next to house ; and \$120,000 for the wooded lot. So, there is no proof that any of the parcel would lose significant amount. In fact, the parcels have relatively high values compared to area.

Thus, this presumption cannot be overcome by proof of little to no economic harm because there is no harm.

Total Value After Division

The presumption may be overcome by proof that the market value of the property as a whole would be significantly larger than the total value of all parcels after division. *Quick.*

Meaning that, the value of the land as a whole would be diminished by division into separate parcels. Your property's current value is approximately \$600,000. It is because the house sits in a neighborhood that includes both residential and commercial uses. As I mentioned above, if we have to divide the parcels into three there will be approximately \$150,000 of loss.

Thus, this presumption cannot be overcome either.

Sentimental and Familial Attachment

Individuals and families can develop a strong attachment to land on which family resides and which has been received by inheritance. These considerations support an order for physical division, especially where family members continue to use some or all of the land as primary residence. However, while sentimental considerations should have great weight, especially in the preservation of a home, considerations of economic value should be a determining factor. *Id.*

In *Mahone*, the court held that even if the familial attachment house was used for primary residence selling the property as one parcel has greater weight. Similarly in your case, even though the house was inherited from your grandfather and Crystal has been using the house as her primary residence, she is planning to move out soon. Moreover, even though she still would like to divide the property into two parcels, the value of selling as a one parcel will be significantly higher and they will each receive \$200,000 instead of \$120,000 and \$130,000.

Thus, the court will likely order to sell as a one parcel to you.

## Question 2

### Reimbursement for Crystal

A cotenant who paid more than her share of the costs of maintaining the co-owned property could bring an action for contribution from the other tenants. Where one cotenant assumes all of these costs, that cotenant could bring an action against the other cotenants for the amount by which those costs exceeded the tenant's share. *Pomeroy.*

*Distribution after Sale*

The court shall order the proceeds of the sale to be divided among the several claimants in proportion to their respective interest after deducting the expenses of the proceedings. CPC s. 1044

Meaning that the court will satisfy one cotenant's right of contribution from other cotenants by deducting costs before dividing the remaining proceeds of sale. In your case, Crystal did the repairs and paid the taxes herself alone. She will have to be reimbursed for these expenses for her share.

Thus, Like in *Boyd*, Crystal will be disbursed \$40,000 divided by three.

### *Improvements*

Cotenant who makes improvements to the property cannot recover the costs of the improvements through contribution. *Boyd*.

However, Like in *Boyd*, since the garage only added value to the property which she will receive her share from the forced share.

Therefore, she will not be compensated \$20,000 for the garage.

Please do not hesitate to reach out if you have any further inquiry.

Sincerely,

Roberta.

Question #6 Final Word Count = 850

**END OF EXAM**