

Partition Actions in Family Real Estate Ownership: LLCs vs. Tenants in Common

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When families co-own investment property, disputes about management or sale can quickly escalate. The risk of a partition action—a lawsuit to force the sale or division of property—depends largely on whether the property is held in an LLC or as a **tenant in common (TIC)**. Understanding these differences is essential for families balancing long-term investment goals with tax planning and capital gains deferral strategies.

Overview

Real estate families often pool their resources to acquire and hold investment property. Two common ownership vehicles are limited liability companies (LLCs) and tenancies in common (TICs). Each structure raises unique issues when family members disagree about the management or disposition of property. Chief among these is the risk of a partition action—a lawsuit by a co-owner seeking to force the sale or division of jointly owned property.

This bulletin explores partition rights in LLC and TIC contexts, and examines whether, and how, families can waive or restrict partition rights in TIC agreements.

Partition in Tenancies in Common

- **General Rule:** In most jurisdictions, a TIC co-owner has an absolute right to seek partition, either by physical division of the property (rare in commercial settings) or, more commonly, by court-ordered sale.
- **Family Risk:** Partition actions can disrupt long-term investment strategies, trigger adverse tax consequences, or force a sale at inopportune times.
- **Marketability Concerns:** The mere existence of partition rights can reduce the market value of fractional TIC interests, making them less attractive to buyers in **real estate acquisitions and sales**.

Partition in LLCs

- **No Statutory Right of Partition:** Unlike TICs, members of an LLC do not have partition rights in the underlying real estate.
- **Exit Through Operating Agreement:** Rights to withdraw, transfer, or be bought out are governed exclusively by the LLC operating agreement.

- **Practical Effect:** LLCs offer greater protection against forced sales and are generally the preferred vehicle when family members are concerned about cohesion, long-term planning, or **joint ventures and structured investments**.

Waiver of Partition Rights in TICs

- **Enforceability:** Courts in many states allow co-owners to contractually waive or limit their right to partition. These waivers are generally upheld so long as they are clear, unambiguous, and not deemed contrary to public policy.
- **Forms of Waiver:**
 - *Express Waiver* – A provision in the TIC agreement stating that each co-owner waives their right to seek partition.
 - *Conditional Waiver* – Limiting partition rights for a specified period (e.g., 10 years) to ensure investment stability.
 - *Buy-Sell Mechanism* – Requiring a co-owner seeking exit to first offer their interest to the other owners before any partition action.
- **Drafting Considerations:**
 - Include explicit language referencing the statutory right of partition and the intent to waive it.
 - Provide alternative exit strategies (buy-sell, rights of first refusal, appraisal-based redemption).
 - Ensure all co-owners consent in writing; unilateral waivers are not effective.
 - Periodically revisit the waiver to ensure it aligns with evolving family and investment objectives.

Families should work with experienced counsel to draft TIC agreements that align with **estate and succession planning** while maintaining 1031 exchange flexibility.

See [IRS Section 1031 overview](#) for more information on tax deferral rules.

Practical Takeaways for Families

- **LLCs minimize risk:** LLCs naturally protect against partition actions but may complicate 1031 exchange planning.
- **TICs offer flexibility:** TICs allow 1031 exchanges but expose families to partition risks unless agreements are carefully drafted.
- **Use enforceable waivers:** Clear, state-compliant waiver provisions can help prevent disputes.
- **Balance goals:** Families should weigh tax deferral objectives against long-term stability when choosing TIC vs. LLC structures.
- **Plan for disputes:** If conflict arises, legal support in **workouts and restructurings** may help preserve investment value.

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