



# The New Civil Code for Everyone

## THE PARTITION

- The partition is regulated by the Civil Code in articles 669-686;
- Considering the steps and actual manner of achieving it, the partition is regulated in the Civil Procedure Code. The essential rules are to be found in the substantive law – the Civil Code.
- It is the legal operation by which an end is put to joint tenancy. Joint tenancy supposes that the right of private ownership is held by two or more holders. Joint tenancy has the following forms:
  - property on joint shares (co-property), which can be: ► regular or  
► compulsory;
  - common indivisible ownership (indivisible ownership).
- In the case of co-property, by partition the jointly owned asset or assets on joint shares are materially divided between the co-sharers, each one of them **becoming the exclusive owner** of a certain asset or material part of the asset from the ones forming the object of the co-property;
- In case of end of the indivisible ownership (the asset or assets commonly held by several persons without any of them being the holder of an established share from the ownership right) the partition can be made so that an exclusive ownership right will be held on the asset or assets;
- In case of partition of common assets of the spouses the special rules will apply which refer to the effects of marital properties, of marital agreements and the effects of divorce on the pecuniary circumstances of the spouses.

### When can one request the Partition?

- As a rule the partition **may be requested anytime**, except for the situation when the partition was suspended by law, a legal document or a judicial decree;
- the partition can be **suspended by an agreement** concluded in authentic form and subject to the formalities of notification provided by law, for a period of maximum 5 years;
- the partition can also be **suspended by judicial decree** for no more than one year, so as not to bring serious damages to the other co-owners;

### Types of Partition

- the partition can be **conventional (by mutual compromise) or judicial (by court order or decree)**;
- if a co-owner lacks the legal competence or if this legal competence is limited, the partition will be allowed to take place by mutual compromise only with the authorization of the guardianship court, as well as, as the case may be, of the legal guardian;
- in the case of timeshare property and in the other cases of compulsory ownership, the partition is only possible by mutual compromise;
- the partition by mutual compromise can be cancelled for the same reasons as contracts;
- the partition made without the participation of all the joint owners will be considered null and void;

### Situations when the partition is inadmissible

- the partition is **inadmissible** in case of compulsory ownership; nevertheless, the partition may be

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requested in the case of common elements of buildings with several stories or apartments when these elements cease to be used as shared premises;

- the partition is **inadmissible** in the case of *usucapio* (prescription) of the asset by one of the owners;

**The Partition modalities** are as follows:

- **in kind**, in proportion with the joint share of each owner;
- **attribution of the entire asset, in exchange of a balancing payment**, in favor of one or several co-owners, on their demand;
- **sale of the asset and distribution of the price: the sale of the asset** is done as established by the co-owners or, in case of disagreement, on public auction, according to the law, and the **distribution of the price** to the co-owners will be done in proportion with the joint share of each one of them;

**Rights of the Creditors**

- the creditors of a co-owner *may judicially execute his/her joint share* from the right on the common asset or *may ask in court for the partition of the asset*, in which case the execution will be performed on the share of the asset or, as the case may be, on the amount of money due to the debtor;
- the personal creditors of a co-owner will also be allowed to *intervene, on their own expense, in the partition as required by the co-owners or by another creditor*.
- Creditors may not, however, appeal against a performed partition, except if the latter took place in their absence and without taking into account their opposition, as well as in the cases when the partition was simulated or done so that the creditors were not able to intervene in the trial;

**Effects of the Partition**

- The ownership right on the partitioned assets arises from the date established by the partition deed, but no earlier than the date when the deed was issued, in case of voluntary partition, or, as the case may be, from the date when the judicial decree remained final;
- In the case of buildings, the legal effects of the partition only take place if the partition deed, issued in authentic form or the judicial decree remained final, as the case may be, have been recorded in the Land Register;
- The deeds issued, according to the law, by one co-owner in relation with the joint asset remain valid and are opposable to the person to which the asset was attributed as a result of the partition;
- As a rule, between the co-owners there is an obligation of warrant against eviction and latent defects, within the limit of the joint shares; the co-owner owe no warranty if the damage is the result of the action committed by another co-owner or if they are held harmless by the partition deed;

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