Co-Ownership of Property in Oklahoma

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CO-OWNERSHIP OF PROPERTY IN OKLAHOMA

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The law has long recognized the need for a person to be able to own property in conjunction with others. Six main forms of co-ownership exist: joint tenancy, tenancy by the entirety (or entireties), tenancy in common, tenancy in coparcenary, tenancy in community (usually called community property), and tenancy in partnership. Of these six, joint tenancy and tenancy in common are the most important and will be discussed in detail—their creation, characteristics, and terminations. The other four types of co-ownership can be summarized more briefly.

Following this analysis of the forms of cotenancy in Oklahoma, the rights and obligations of the cotenants, among themselves and in regard to third persons, will be explored. Finally, we will turn to a particular mode of terminating cotenancies that deserves special attention—partition of the property.¹

Creation of Joint Tenancy

As at common law, joint tenancy in Oklahoma requires the four unities of time, title, interest, and possession, and the presence of these unities creates a situation in which each tenant is owner of the whole property, subject only to the rights of his fellow owners.² The key question to be answered in the determination that such co-ownership has been created is whether the grantor's words and actions indicated an intention

¹ For a good general discussion of the cotenancies, including tenancy in community, and of the means of terminating them, including partition, see W. BURBY, REAL PROPERTY 215-66 (3d ed. 1965) [hereinafter cited as W. Burby].

to establish among the cotenants the right of survivorship as to the property. This right entitles the survivor or survivors within a joint tenancy to maintain ownership of the entire property following death of a tenant; the heirs of the decedent have no claim. Where this right is made clear, the form of co-ownership must be joint tenancy. Similarly, where the words "joint tenancy" are used in a grant or devise, the presumption is that they are used in their technical, common law sense and with the intention of establishing the form of cotenancy that includes right of survivorship.

Unlike the common law, however, the Oklahoma law does not favor joint tenancy and will not presume a right of survivorship. Thus, a deed to two or more grantees presumably conveys land in tenancy in common; a joint tenancy is not created under the residuary clause of a will unless expressly declared; and joint ownership of a bank account is not established merely by showing that a person deposited the money in such manner that it could be withdrawn by himself and others. Arrangement of names and wording of instruments does not evidence a joint tenancy unless it is shown that joint control and right of survivorship were intended by the creator. In one respect, Oklahoma does relax the common law rules on creation of such ownership: a grantor-owner may, despite the technical absence of unities of time and title, make himself and another person (or other persons) joint tenants of the property he formerly owned by himself.

Creation of joint tenancy in Oklahoma is largely covered by statute, and the legislation makes clear that this tenancy may exist in both real and personal property, but will exist only where expressly declared by the creating instrument. Such tenancy existed in Oklahoma prior to enactment of the statute, and even now, this form of ownership exists as a portion of our common law, apart from the types and procedures described

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3 Hendricks v. Grant County Bank, 379 P.2d 693 (Okla. 1963).
5 Kilgore v. Parrott, 197 Okla. 77, 168 P.2d 886 (1946) (deed would have created tenancy in common but for the words "and in the event of the death of either, then the survivor").
11 In re Pugh's Estate, 281 P.2d 937 (Okla. 1955).
12 60 OKLA. STAT. § 74 (1971); Barton v. Hooker, 283 P.2d 514 (Okla. 1955) (bank account). The state gift tax may apply to such a transaction. 68 OKLA. STAT. § 901e (1971).
Recent cases on joint tenancy have often involved bank accounts, and the essential element of proof has been intention to create a right of survivorship. In one case, the donor-mother and donee-daughter had signed writings showing a clear intent on the donor’s part to make the donee a joint owner of two savings accounts and one checking account. The writings all contained survivorship clauses and provisions that either party or the survivor could withdraw part or all of the account. A joint tenancy was found to exist. But, in another case, the evidence showed that the decedent-mother had created a bank account and given her son the right to withdraw therefrom in order merely that he might have access to funds for bringing her body home for burial upon her death. She intended that all other funds in the account be distributed as part of her estate. Thus, proof of intention of right of survivorship failed and with it the alleged joint tenancy. Of course, a person in whom rights of joint tenancy have been created may still be found not to hold them absolutely, but to hold the property in trust for others.

Characteristics of Joint Tenancy

The four unities that must exist for creation of a joint tenancy may also be considered the tenancy’s outstanding characteristics. The nature of the tenancy is greatly affected by the essential right of survivorship; the survivor will take the property under the original grant when the other joint tenants die. As to such property, there is nothing to inherit from those dying first. Each joint tenant has the right to sever and convey
only an undivided share (for instance, an undivided half where there are two joint tenants) of the property and may not convey the entire property so as to cut off the rights of survivorship therein of other joint tenants. The right of the survivor to claim the entire property is not affected by the fact that it was the deceased tenant who had originally earned or otherwise acquired it, and the right exists in situations in which a grantor has made himself and another joint tenants of property that formerly belonged just to the grantor. The right is not dependent on any marital or blood relationship, and it will be created by an instrument naming a husband and wife as joint tenants even if they were not in fact husband and wife.

One point on which doubt has been expressed is whether a surviving spouse can claim a probate homestead right in property which the deceased held in joint tenancy with someone other than the surviving spouse. In one early case, the Oklahoma court indicated that such a homestead claim would be recognized, but it has been noted that although recognition of a constitutional homestead debt-exemption as to such property is proper, recognition here of the probate homestead is inconsistent with the right of survivorship and has been denied in other jurisdictions.

An interesting problem arises if one joint tenant takes the life of another joint tenant in such manner as to give rise to legal liability. Should the killer, through the right of survivorship, in effect be allowed to profit from his wrong? Technically, the right of survivorship does not result in any profit but simply allows the survivor to remain owner of what he has owned in its entirety all along. The Oklahoma statute covering inheritance and collection of insurance by one convicted of taking the life of another does not literally cover the joint tenancy situation, and an early case accorded a slayer the usual right of survivorship. It is possible to deny this

514 (Okla. 1955) (surviving co-owner becomes sole owner of U.S. Savings Bond where Treasury Regulations under which bond was issued so provide).

30 84 OKLA. STAT. § 231 (1971) covers only the situations in which a person has killed one from whom he would ordinarily inherit, take by devise, legacy, descent, or distribution, or take as a beneficiary under an insurance policy or certificate of membership.
right to the killer, however, and let it pass to the slain tenant's heirs or declare that the slayer holds for them in constructive trust.\(^3\)

Besides right of survivorship, the other leading characteristic of joint tenancy is equality of interest by the tenants. In the absence of special agreement to the contrary, all tenants have equal rights to possess and use the property.\(^3\) So long as they live, all joint tenants share the beneficial interest in the property,\(^4\) and ejectment may be brought by one tenant against another who has ousted him or denied him his interest in land jointly held.\(^3\) Until a voluntary or involuntary severance of a tenant's share occurs or a partition agreement or action takes place, each joint tenant owns the entire property. It has, however, been provided for the protection of bailees that if a thing bailed is jointly owned by persons who cannot agree on its manner of delivery, the bailee may deliver to each his proper share (eliminating the need for any action in the nature of interpleader) if this can be done without injury to the property.\(^5\)

Many problems have arisen as to bank accounts intended or alleged to be in joint tenancy, and it has been said that the application of such tenancy to bank deposits strains the common law concept.\(^7\) Indeed, the usual unities do not always appear present in these situations, and at common law, joint tenancy as to bank accounts requires that withdrawals be made only for joint use of the parties and that regular accountings be made. In Oklahoma, specific statutes cover joint ownership of bank accounts and of savings and loan certificates,\(^8\) and provide for payment to any such tenant or the survivor. But it has been held that this legislation merely relieves the banking institutions from liability and does not affect the interests of the parties.\(^9\) A 1938 case\(^40\) upheld a joint tenancy with usual right of survivorship in a bank account as between husband and

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33 See Note, Real Property: Joint Tenancy: Effect of Murder of One Joint Tenant by Another, 6 Okla. L. Rev. 228 (1953), discussing In re King's Estate, 52 N.W.2d 885 (Wis. 1952), where the murdered tenant's right of survivorship was said to pass to her heirs and become operative on the murderer's death. See generally W. Bubey, supra note 1, at 219. See also Annot., 4 A.L.R.3d 427 (1966) on rights to proceeds of insurance on jointly held property where a joint owner dies pending payment.


wife, but the holding was later limited to the husband-wife situation. The present general statute on joint tenancy, with its reference to both real and personal property, clearly applies to bank accounts, and there seems to have been no doubt in Oklahoma since adoption of that statute in 1945 that this form of tenancy and the right of survivorship can apply to them. The joint tenancy may be established by the signing of a signature card expressly declaring a joint tenancy; the survivorship characteristic will then attach without more.

Due to the doubt over common law principles of joint tenancy applying to bank deposits, it is wise in these instances to follow the form provided by the general Oklahoma statute on joint tenancy. It seems, however, that a joint tenancy between husband and wife could be created without following those requirements, and the Oklahoma court has held that where the wording of a certificate of deposit does not itself indicate a joint tenancy, such ownership may nonetheless be established by extrinsic facts showing the intention to provide a right of survivorship. There is danger in not complying with statutory requirements, however; if no right of survivorship is held established, common law rules may invalidate as testamentary an attempted gift in a bank account unless some present interest is conveyed. One case did find a completed gift of a future interest, despite the donor's reserving a power of revocation. But a recent opinion found no joint tenancy as to a certificate of deposit which did not itself contain language sufficient to establish the relationship. The court listed five factors which would have to exist in order to create the joint tenancy in such a case: (1) some unqualified expression of intention by the original owner, (2) establishment of the account in a form advised by an officer of the depository, (3) accessibility of the account to both (or all) parties, (4) creation of the account in such manner that use may be made at the discretion of both (or all) tenants, and (5) a showing that possessory rights could be exercised by either tenant (or any tenant) by himself. There was here no showing of any of these factors.

42 60 Okla. Stat. § 74 (1971). This statute was passed in 1945.
46 This is possible under 32 Okla. Stat. § 8 (1971), dealing with means by which spouses may acquire and hold property. See Clift v. Grooms, 331 P.2d 382 (Okla. 1958).
47 Hendricks v. Grant County Bank, 379 P.2d 698 (Okla. 1963).
**Termination of Joint Tenancy**

In addition to a partition action, discussed *infra*, there are three main ways in which a joint tenancy may be terminated. Death of all but one joint tenant will, by the very nature of the tenancy, bring the relationship to an end, and the survivor will have sole and single ownership. Statutes on presumption of death should be consulted for possible help in establishing that a joint tenancy has terminated in this manner. A special problem arises where all joint tenants have apparently died simultaneously. In Oklahoma and in many other jurisdictions, this is now covered by the Uniform Simultaneous Death Act, which basically provides that a proportionate fraction of the property shall be distributed as if each one had survived the others. A specific Oklahoma statute also provides a method by which a survivor in a joint tenancy may, if there have been no administration proceedings commenced, have the fact of a joint tenant’s death judicially determined.

The second way in which the joint tenancy may be terminated is by voluntary conveyance. Where there are just two parties to the tenancy and one conveys his interest, the joint tenancy is terminated altogether. Since the grantor-tenant obviously cannot be allowed to convey the whole property (although theoretically he owned the whole), he is held to have conveyed an undivided one-half interest, and the relationship between the grantee and the other member of the original joint tenancy is held to have become a tenancy in common. Similarly, where there are more than two joint tenants, a conveyance by one would sever his undivided share, although it would not end the joint tenancy among the other members. A share in a joint tenancy will only be severed by a true conveyance, however, and not, for instance, by a will stating that the testator no longer...
desires a previously executed deed of joint tenancy to herself and another to be effective.\textsuperscript{55} It has been broadly stated that any act of a joint tenant that is inconsistent with continuation of the joint tenancy will terminate the arrangement.\textsuperscript{56} And, clearly, joint tenants acting together may, even without a partition action or agreement, terminate the tenancy as to certain property by making a conveyance thereof, as where they together withdraw money from a joint savings account and have it placed in the individual account of one of them.\textsuperscript{57}

Joint tenancy may also be terminated by “involuntary conveyance”—where a creditor levies on a tenant’s undivided share. The creditor must levy execution during the lifetime of the debtor-tenant; once the debtor has died, the survivor takes free of claims against the decedent on which no levy has been made.\textsuperscript{58}

The Oklahoma statute on joint tenancy specifically provides that adjudication of incompetency of one of the parties does not terminate a joint tenancy,\textsuperscript{59} and it is the generally accepted modern view that a lease or mortgage by one tenant of his undivided share of the property does not terminate the tenancy.\textsuperscript{60} Neither, of course, does a lease or mortgage of the entire premises.

\textit{Tenancy by the Entirety}

This tenancy requires the same four unities of time, title, interest, and possession as in joint tenancy, plus the additional unity of person. Since the common law views the husband and wife as one person, this form may exist between, and only between, spouses. It differs from joint tenancy chiefly in three respects: (1) An individual member of the tenancy may not, acting alone, sever his interest in the premises or obtain partition thereof; this may be done only by mutual consent or operation of law. (2) Traditionally (although there is now contrary authority), the tenancy cannot exist as to personal property due to the husband’s complete control and management of the wife’s personalty. (3) At common law, creditors of the husband could attach the property if they did so while the husband lived, including after he survived the wife. But the wife who outlived her husband took free from the claims of his creditors (unless they had already attached the property). Her creditors could attach the property only if she did survive the husband. Since the adoption of the Mar-

\textsuperscript{55} Littlefield v. Roberts, 448 P.2d 851 (Okla. 1968).
\textsuperscript{58} See W. BURBY, supra note 1, at 221.
\textsuperscript{59} 60 OKLA. STAT. § 74 (1971).
\textsuperscript{60} W. BURBY, supra note 1, at 220-21, and authorities cited therein.
ried Women's Acts, however, property held in such tenancy is subject only to claims against both spouses; the individual creditors of each cannot reach the property in most jurisdictions. Once one spouse has died, of course, the surviving spouse's individual creditors may then reach the property, the death terminating the tenancy.

Before statehood, Oklahoma clearly recognized tenancy by the entirety but was divided on the common law rule that a conveyance to husband and wife presumably creates such tenancy. Oklahoma Territory did not apply the rule, finding it inconsistent with the Married Women's Acts. Indian Territory, applying Arkansas law, followed the common law presumption. After statehood, the common law rule was uniformly rejected. Since that time, a conveyance to husband and wife has been presumed to create a tenancy in common, although joint tenancy may be created by express language. Whether a tenancy by the entirety might also be created by express wording is unsettled. An early case indicates that the estate cannot exist in Oklahoma, and the statute listing forms in which husband and wife may own property does not mention this tenancy. However, the general Oklahoma legislation on joint tenancy mentions tenancy by the entirety several times and expressly provides that it may exist only between husband and wife. The estate is also mentioned in the version of the Uniform Simultaneous Death Act adopted in Oklahoma. The possible existence of such an estate in Oklahoma is, in any case, an academic question; for all purposes, such tenancy, assuming it can exist, will be treated the same as joint tenancy.

Perhaps the closest thing to the original common law tenancy by the entirety now capable of creation under Oklahoma law is the probate homestead, under which certain property of a deceased spouse passes to the surviving spouse (and in some instances, to surviving children where both

61 The historical background on tenancy by entirety in Oklahoma is discussed in Note, Real Property: Joint Tenancies: Delivery of Deeds, 1 Okla. L. Rev. 90 (1948).
63 Clay v. Robertson, 30 Okla. 738, 120 P. 1102 (1912).
70 See 60 Okla. Stat. § 74 (1971), which, in regard to levy by creditors, states: “Nothing herein contained shall prevent execution, levy, and sale of the interest of the judgment debtor in such estates and such sale shall constitute a severance.” On the effect modern statutes have had on tenancy by the entirety, see generally Annot., 32 A.L.R.3d 570 (1970).
spouses die) free for the survivor's life from the decedent's disposition by will, and free forever from the claims of the decedent's creditors.\textsuperscript{71}

Creation of Tenancy in Common

Tenancy in common, which involves each tenant holding an undivided share of the property, must ordinarily be the form of co-ownership resulting from conveyances by different instruments, or at different times, or under any circumstances not giving rise to the four unities required for joint tenancy.\textsuperscript{72} In addition, there are three situations in which Oklahoma statutes specifically provide for tenancy in common: (1) A devise or legacy to two or more persons will cause the property to vest in the devisees or legatees in such form of co-ownership,\textsuperscript{73} as will the passing of property by intestate succession.\textsuperscript{74} (2) A gift, testamentary or otherwise, to the Oklahoma governmental units of state, county, and city or town is to be construed so as to create a tenancy in common among such units, each taking an undivided one-third interest unless the gift specifies otherwise.\textsuperscript{75} (3) Trees whose trunks stand partly on the land of two or more contiguous landowners belong to those owners in common.\textsuperscript{76} But it is clear from both Oklahoma statutory\textsuperscript{77} and case\textsuperscript{78} law that a strong presumption of tenancy in common results from any conveyance to two or more persons, where the specific statutes are inapplicable. A joint tenancy, as opposed

\textsuperscript{71} See Note, Probate: Nature of the Probate Homestead, 10 Okla. L. Rev. 106 (1957).
\textsuperscript{72} See Ball v. Autry, 427 P.2d 424 (Okla. 1966), where, however, no form of cotenancy at all was found to exist.

A recent important application of tenancy in common is found where a person purchases a portion of a condominium dwelling. In addition to separate fee ownership of a specific area, the condominium dweller is a tenant in common with the other occupants of the land on which the building stands, the roof, hallways, entrances, etc. See R. Wright, AIRSPACE 87-99 (1968). See generally Cribbet, Condominium—Home Ownership for Megalopolis?, 61 Mich. L. Rev. 1207 (1963); Hemingway, Condominium and the Texas Act, 29 Tex. B.J. 731 (1966).

\textsuperscript{73} 84 Okla. Stat. § 184 (1971). Cf. 68 Okla. Stat. § 807(D) (1971), on valuing an estate for estate-tax purposes. See also Aldrich v. Hinds, 116 Okla. 300, 245 P. 854 (1926) (heirs of Indian whose allotment was selected by administrator take as tenants in common).


\textsuperscript{75} 60 Okla. Stat. § 391 (1971).

\textsuperscript{76} 60 Okla. Stat. § 68 (1971). The language indicates that the trunk-owners do not necessarily share the tree in equal parts, but each owns an undivided share.

\textsuperscript{77} 60 Okla. Stat. § 74 (1971) ("when expressly declared in the instrument"). The statute goes on to provide that if a joint tenancy or tenancy by the entirety is created by the granting clause of an instrument, this shall control over any inconsistent language in the habendum.

\textsuperscript{78} E.g., McIlwain v. Bills, 206 Okla. 238, 242 P.2d 707 (1952).
to tenancy in common, is created only where the right of survivorship is made very clear by the grantor.\textsuperscript{79}

A tenant in common may sell his undivided interest at any time, and the purchaser will then take his place in the tenancy in common.\textsuperscript{80} It has even been said that a lessee under a lease from one of several cotenants becomes a tenant in common,\textsuperscript{81} although perhaps a better conclusion is that the lessee is simply given permission to exercise the possessory rights that otherwise belong to the lessor-cotenant. Tenancy in common may result when two persons agree to buy property together and to reimburse each other for any moneys advanced by one for the other in connection with the purchases.\textsuperscript{82} Tenancy in common may exist as to both real and personal property, including oil, gas, and other minerals.\textsuperscript{83} Indeed, tenancy in common is frequently found among owners of mineral interests in Oklahoma. Each such tenant may then lease his undivided interest without consent of his cotenants, and the lessees of the different cotenants become themselves cotenants with one another.\textsuperscript{84} Furthermore, each tenant in common of mineral rights may himself enter the premises and explore and drill without consent of his fellow tenants.\textsuperscript{85}

Property held in tenancy in common may be sold for taxes owed, like any property, and the sale, if of the whole property, will give the purchaser sole ownership, not just a share in the former cotenancy.\textsuperscript{86} Likewise, it has been held that a deed conveying "an ——— undivided interest" (blank not filled in) transfers all the interest of the grantors in the described tract and does not make the grantee merely a cotenant with the conveyors.\textsuperscript{87}

\textsuperscript{79} Clinton v. Clinton, 187 Okla. 144, 101 P.2d 609 (1940), which notes that the principal difference between joint tenancy and tenancy in common is the former's right of survivorship.

\textsuperscript{80} Longfellow v. Byrne, 68 Okla. 314, 174 P. 745 (1918).

\textsuperscript{81} Earp v. Mid-Continent Petroleum Corp., 167 Okla. 86, 27 P.2d 855 (1933).

\textsuperscript{82} See Feagin v. Champion, 195 Okla. 116, 155 P.2d 518 (1944) (transactions not joint ventures, but parties were tenants in common of properties acquired).

\textsuperscript{83} De Mik v. Cargill, 485 P.2d 229 (Okla. 1971) (oil and gas lease); Coal Oil Gas Co. v. Styrion, 303 P.2d 965 (Okla. 1956).


\textsuperscript{85} Dilworth v. Fortier, 405 P.2d 38 (Okla. 1964).


\textsuperscript{87} Beaton v. Pure Oil Co., 483 P.2d 1145 (Okla. 1971). The court found support for its conclusion in 16 OKLA. STAT. § 19 (1971), which provides that all of a grantor's interest in property is presumed conveyed by a deed in the absence of clear language to the contrary.
Characteristics of Tenancy in Common

Tenants in common hold their interests by several and distinct titles. One may hold his part in fee while the other holds for life, there being no need for unity of interest. Only one unity is required or normally present—unity of possession, which assures each tenant an equal right with the others to the use and enjoyment of the property. No tenant is entitled to possession of the entire premises to the exclusion of his cotenants, nor is any one tenant entitled to exclusive possession of any particular part. A cotenant may not prevent his fellow tenants from possessing the premises either by themselves or through lessees; thus, cotenant A could not exclude cotenant B's lessee from the premises unless cotenant B consented to or ratified the conduct. Since the possession of one cotenant is considered the possession of all, a cotenant himself not in actual possession will not fall within the terms of the champerty statutes when he conveys his interest, so long as some cotenant of his is in possession.

It has been said that each tenant in common has a separate and distinct freehold in the premises. Each may convey his undivided share even though his fellow tenants object and claim that their rights will be adversely affected upon subsequent partition. On the other hand, one tenant in common is not, in the absence of special agreement, the agent of the others for purposes of sale or lease of the property, and thus a conveyance by one cotenant can normally affect only his interest, not the rest of the property. All rights in and benefits from the premises are to be shared equally, although it is common for one tenant to be made agent of the others and allowed to possess and operate the premises for their mutual benefit.

As in the case of property jointly owned, a bailee of property owned by tenancy in common is protected by Oklahoma legislation providing that

89 See Taylor v. Brindley, 164 F.2d 235 (10th Cir. 1947).
93 Skelly Oil Co. v. Wickham, 202 F.2d 442 (10th Cir. 1953) (owners of undivided interests in minerals).
94 Wolfe v. Stanford, 179 Okla. 27, 64 P.2d 335 (1937).
95 Taylor v. Brindley, 164 F.2d 235 (10th Cir. 1947).
97 Such an arrangement is described in Britton v. Greene, 325 P.2d 377 (Okla. 1953).
if the co-owners cannot agree on its manner of delivery, he may deliver a proper share to each cotenant if this may be done without harm to the property. As to probate homestead, the law is much clearer with regard to property held in tenancy in common than as to property held in joint tenancy: lands held in tenancy in common qualify for such homestead to the extent of the undivided interest of the decedent-homesteader. Cases have found such a homestead to exist where decedent owned as little as a one-eighteenth interest in the premises and where he paid rent to cotenants. Such homestead is not abandoned by the owner's conveyance of an undivided interest therein so long as he retains some interest and continues to occupy the land.

**Termination of Tenancy in Common**

An agreement or action of partition is the usual means of terminating a tenancy in common (discussed infra). Death of one cotenant will not bring termination, since those who inherit from the deceased will simply take his undivided share and thus join the cotenancy. The same result occurs following sale of one tenant's undivided interest or its attachment by creditors. A tenant does not have the right to convey any particular physical portion of the premises, and such a conveyance will normally be enforceable only to the extent of what could be conveyed (the undivided interest) or will be considered void. It might, however, result in a kind of partition "agreement," or partition by estoppel, if the other tenants knowingly let the transaction occur, knowingly let the purchaser take possession thereunder, or otherwise expressly or impliedly consent to the transaction.

Conveyances to one tenant in common of the interests of all the others will, naturally, terminate the cotenancy. But if such a conveyance is made merely so that the grantee may sell the property and the idea of sale is later abandoned, the property remains in tenancy in common. A tax resale of the entire premises likewise terminates the tenancy, and it has been held that a former cotenant of the mineral interests under a tract may purchase the premises from those who obtained title at the tax resale, where

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93 See W. Buxey, supra note 1, at 234.
such former cotenant had had no obligation to pay the taxes himself and
where there was no showing of fraud or collusion.106

Tenancy in Coparcenary

At common law, those inheriting an estate by descent are called co-
parceners and the estate is tenancy in coparcenary.106 This form of co-
tenancy may be considered a cousin of tenancy in common, and today in
Oklahoma, as in most states, those inheriting by intestacy,107 as well as
those taking together under a will,108 will hold in tenancy in common.
Tenancy in coparcenary is mentioned in several Oklahoma statutes—
those describing the mutual rights and obligations of cotenants as to re-
pairs, improvements, rents, and profits,109 and in the statute describing
the methods by which joint tenancy and tenancy by the entirety may be
created.110 The statutes do not, however, distinguish treatment of this
tenancy from treatment of a tenancy in common, and thus the estate in
coparcenary may, if considered at all, be included as a type of the latter
tenancy.

Tenancy in Community

Community property began life in Oklahoma with legislation passed
in 1939,111 the validity of which was upheld by the supreme court in
1941.112 This legislation applied to husbands and wives who filed to come
under its terms. Because of this optional feature, one of the most desired
consequences, at that time, of community property—favorable treatment
under federal income tax laws—did not result, and new legislation was
passed in 1945 primarily to eliminate this shortcoming.113 Under the new
law, all property acquired by either husband or wife during marriage and
after the effective date of the act, except what was specifically defined as
separate by this legislation, was deemed community, or common, property
of the spouses. Those who had filed under the old law would be governed
by the new statute as of the date of their election. The validity of this act

infra notes 226-34, in which the purchase was by one obligated to pay the taxes.
107 Davis v. Morgan, 186 Okla. 30, 95 P.2d 856 (1939).
110 60 Okla. Stat. § 74 (1971), stating in part, “A tenancy by entirety can only be
created between husband and wife.”
112 Harmon v. Oklahoma Tax Com’n, 189 Okla. 475, 118 P.2d 205 (1941).
was also upheld.\textsuperscript{114} The creation of the joint federal income tax return eliminated the chief tax advantage of the community property system, and, like several other states, Oklahoma then repealed its legislation on this form of co-ownership.\textsuperscript{115}

Repeal presented the problem of how to treat rights that had arisen while the legislation was in effect, and this was handled by a section of the repealing statutes.\textsuperscript{116} This specified that any married couple could, within one year from the effective date of the repealing act (June 2, 1949), enter into the record an agreement specifying (and altering as they wished) their rights under the old legislation. In the alternative, either spouse might file an action to have those rights judicially determined. Failure to make and record the agreement, or to file such an action and record the judgment, within the specified time would thereafter bar the spouse who did not appear of record as the owner or who was not separately in possession of the property, from filing any claim against third persons acquiring any interest in the property. Furthermore, after three years from repeal of the legislation, no action or proceeding could be brought against anyone to establish or recover any interest based on the repealed statutes unless the interest had been placed on record as provided. Thus, tenancy in community in Oklahoma was terminated except as it may continue its life under recorded agreements or judgments dealing with property that was covered by the old statutes. A rare case might still be found not covered by the repealing statutes,\textsuperscript{117} and the Oklahoma gift tax statute still expressly provides that the tax does not apply to acquisition by husband and wife of community property.\textsuperscript{118} A different solution to problems raised by similar community property legislation was found in Pennsylvania, which simply held its entire act unconstitutional, thereby voiding \textit{ab initio} rights thereunder.\textsuperscript{119}

\textsuperscript{114} Swanda v. Swanda, 207 Okla. 186, 248 P.2d 575 (1952). By the time of this case, the legislation had been repealed.
\textsuperscript{115} Sess. Laws of Okla. ch. 229 § 1 (1949), which was effective June 2, 1949.
\textsuperscript{117} Swanda v. Swanda, 207 Okla. 186, 248 P.2d 575 (1952), noted at 6 Okla. L. Rev. 119 (1953), was such a case; this was the opinion that upheld the legislation's constitutionality. Earlier cases had applied the statute but not been called on to decide its constitutionality. Champion v. Champion, 203 Okla. 105, 218 P.2d 354 (1950); Schwartz v. McDaniel, 202 Okla. 324, 213 P.2d 568 (1950).
\textsuperscript{118} 68 Okla. Stat. § 901e (1971).
\textsuperscript{119} Wilcox v. Penn Mut. Life Ins. Co., 55 A.2d 521 (Pa. 1947), noted at 1 Okla. L. Rev. 57 (1948). The note writer pointed out the similarity of the Pennsylvania and Oklahoma acts and suggested that the Oklahoma Act might also be unconstitutional insofar as it gave the community the income from separate property owned before the effective date of the legislation. But the writer felt that the entire Act would not then necessarily need to be struck.

The Pennsylvania court was influenced in its decision by its finding that the legislation
One problem under the old legislation was the presumption that all property of the spouses was community. What if a gift were desired to a spouse as his or her separate property? Property acquired by gift, devise, or bequest to an individual spouse was normally excepted from community property, and it was suggested that a deed of real property should state that no monetary consideration had been given in return, in order to make certain that the transaction would be treated as a gift.2 A possible limitation on the legislation’s presumption that all property was community could be found in its statement that all “effects” either spouse owned at the time of the marriage’s dissolution would be, for purposes of distribution, presumed community, but it is doubtful that “effects” would have been given a narrow reading.2 Another doubtful point was the husband’s degree of control over his salary. Clearly, the salary was community property, and the wife had a half interest. But it seemed the entire amount might nonetheless be under the husband’s control, subject to his disposal, and subject to liability for his torts—at least those torts in connection with acts having some relation to the community.2

These problems in Oklahoma are mostly matters of history. Although tenancy in community is still mentioned by statute as a method by which husband and wife may hold property,2 it seems this generally can be true only under the aforementioned recorded agreements or judgments. Where property is so covered, it might fall within the specific provision on community property in the Uniform Simultaneous Death Act, providing that in the event of simultaneous demise of the spouses, half the property shall pass as if the husband had survived and as if this were his separate property, and half as if the wife had survived and this were her separate property.2

In general, although spouses may hold in joint tenancy or tenancy in

was vague and inconsistent with common law principles. See generally W. De Funiak, Community Property §§ 3-5 (1943).

At one time, the suggestion was made that the Oklahoma-Pennsylvania act might serve as a model for the older community-property states. De Funiak, The New Community Property Law, 16 Okla. B.A.J. 1123 (1945).


121 See the discussion of this point in Note, Community Property: Commingled Property: Presumptions: Gifts Between Spouses, 2 Okla. L. Rev. 71, 72 (1949).


common, each has no interest in the separate property of the other. Neither is answerable for the acts of the other; the husband's property is not liable for debts of the wife contracted before marriage, and the wife's property is not subject to any debts of the husband but is subject to her own debts, contracted either before or after marriage. The woman's legal personality and rights are not affected by her marriage. Of course, despite the termination of community property in Oklahoma, a surviving spouse has rights in the family homestead and also, by special Oklahoma statute, in the automobile of a spouse who died intestate.

Tenancy in Partnership

An Oklahoma case distinguishes a partnership from joint ownership of property by stating that partnership arises from contracts between the parties while contractual relations are unnecessary to the shared ownership. An Oklahoma statute states that joint tenancy, tenancy by the entirety, and tenancy in common do not in themselves establish a partnership among the co-owners, whether or not profits from the property are shared. But in any partnership, there will be a form of co-ownership of property that may be called tenancy in partnership—indeed, Oklahoma has referred to joint ownership of funds as a requisite of a partnership.

The ownership of real property in Oklahoma by a partnership has been affected by our adoption of the Uniform Partnership Act. At common law, a partnership could own personal property in the partnership name, but could not convey or own realty in that name. Although no Okla-

125 32 OKLA. STAT. § 4 (1971). In divorce actions, Oklahoma courts do speak of “jointly acquired property,” which for purposes of division may be treated much the same as community property. See Note, Domestic Relations: Relevant Factors in the Division of Jointly Acquired Property, 23 OKLA. L. REV. 288 (1970).

126 32 OKLA. STAT. § 9 (1971).


128 The probate homestead is provided for by 38 OKLA. STAT. §§ 311, 313, 316 (1971). Other exempt property is listed in 38 OKLA. STAT. §§ 311-12 (1971). The automobile provision is 84 OKLA. STAT. § 232 (1971).


130 54 OKLA. STAT. § 207(2) (1971).


See also 54 OKLA. STAT. §§ 81-86 (1971) (on use of fictitious names) and 54 OKLA. STAT. §§ 141-76 (1971) (Uniform Limited Partnership Act).
homa cases specifically so held, it seemed that the common law rule applied in this state prior to adoption of the Uniform Act and, thus, that the only way for such a firm to take or convey realty was in the names of the individual partners. Sale of partnership property required the signature of all partners, personally or by authorized agents, and this requirement proved cumbersome in some large mineral and real estate businesses. The Uniform Act specifically provides that title to realty can be acquired and conveyed in the partnership name. Indeed, it must be so conveyed if acquired in that name, and the only signature needed is that of one of the partners, who in effect acts as agent for the partnership. If the property is in the partnership name, such a conveyance will, however, be valid only if the signing partner is acting within the scope of his real or apparent authority. Title may still be taken in the names of the individual partners as joint grantees, or the property may be held in the name of an individual partner.

Where title is in the name of a grantor-partner, he may convey legal title and terminate the partnership’s interest if the grantee is a bona fide purchaser (with no knowledge of the partnership interest) or if the grantor acts within his real or apparent authority. A separate Oklahoma statute provides for appointment of a receiver where necessary in an action between partners or among others jointly owning or interested in property—as where it is shown the property is in danger of being lost or injured. Although there is no specific Oklahoma authority on the point, it has been noted that the state clearly seems to recognize the right of a husband and wife to form a partnership with one another, and thus tenancy in partnership might be added to the list of ways in which spouses may co-own property.

A partnership is sometimes contrasted with a joint adventure (also called joint venture or joint enterprise). The latter normally is formed merely for a single transaction, and this has been said to be the factor that distinguishes the venture from a partnership. Thus, it might seem that tenancy in partnership would not here be found, and the rules governing partnership transfer and title would not apply. In fact, it seems that, within the more limited scope of such an enterprise, similar rules

Three elements are sometimes said to be necessary to the joint venture: a joint interest in and power over property, an express or implied agreement to share profits and losses, and conduct indicating cooperation. But the joint-ownership requirement has not been strictly applied, and it has been held the property might be entirely owned by one member. Other cases have said that some members may contribute nothing but services. It is, however, true that (1) many such enterprises do hold property in an enterprise name or the names of the several participants, that (2) each participant has been said to have an equitable interest in the income and profits of the venture, that (3) until the venture is terminated, one party cannot exclude his cohorts from an interest in the property by purchasing it for his individual benefit, and that (4) the joint venture is taxed as a partnership both by Oklahoma and federal income tax laws. Thus, though co-ownership of property may not be essential to a joint venture (as it apparently is to a partnership), such ownership, especially of profits of the business, may often be found, and tenancy by joint venture might be considered a variant on tenancy by partnership.

Rights and Obligations of Cotenants

The co-ownership of property does not establish the existence of a joint venture or joint profit among the parties. However, the Oklahoma Supreme Court has stated that co-owners of property do stand in a relation of mutual trust and confidence as to that property, that one will not be allowed to act in hostility to the others in reference to the property, and that normally all profits and increments are to be shared equally by the co-owners. The federal courts have exhibited a slightly different atti-

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144 INT. REV. CODE OF 1954 § 761(a); 68 Okla. STAT. §§ 874, 884(E) (1971).
145 Taylor v. Brindley, 164 F.2d 235 (10th Cir. 1947) (mineral interest; noted that the cotenancy may be involuntary).
tude, tending to emphasize the lack of any actual trust or agency relationship among co-owners.\textsuperscript{147} Most cases in both state and federal court employ the theory of equality of interest in determining the mutual rights and obligations of co-owners. The law in this area does not normally vary according to whether the co-ownership is joint tenancy, tenancy in common, or some other form, but most of the cases have dealt with tenancy in common.

\textit{Taxes}

Oklahoma follows the general rule that each cotenant is obligated to pay his proportionate share of the property taxes\textsuperscript{148} and that if any cotenant should pay more than his share, he will not be held to have acted as a volunteer but will be allowed contribution from his fellow owners.\textsuperscript{149} Where the cotenancy exists as to a future estate and the present possessor is a life tenant, the life tenant is the one primarily obligated for the taxes and to whom the remainderman who pays such taxes should look for reimbursement.\textsuperscript{150} If property is owned concurrently by one or more parties who must pay taxes and one or more parties who are immune (such as certain eleemosynary organizations), it is the duty of the owner or owners paying taxes to list their own undivided interests for taxation at the same time and in the same manner as other taxable property is listed; thus, the immunity does not affect their interests.\textsuperscript{151}

\textit{Repairs, Improvements, and Insurance}

The basic Oklahoma statute on repairs and improvements of co-owned property states that if one co-owner has by consent the management of the estate, he may charge the other co-owners their proportionate share for any repairs or improvements he makes with their knowledge and without their objection.\textsuperscript{152} It would seem that a nonmanaging co-owner who is given reasonable notice would become so obligated unless he made known his objection; silence will be taken as consent. Where objection is expressed or reasonable notice is not given, the statute would appear to make it clear that the co-owner who made repairs or improvements would

\textsuperscript{147} See Britton v. Green, 325 F.2d 377 (10th Cir. 1963); cf. Taylor v. Brindley, 164 F.2d 235 (10th Cir. 1947).
\textsuperscript{148} See Curry v. Freichs, 194 Okla. 230, 149 P.2d 95 (1944).
\textsuperscript{149} Helm v. Belvin, 107 Okla. 214, 232 P. 382 (1924).
\textsuperscript{150} Id.
\textsuperscript{151} 68 OKLA. STAT. § 2428 (1971).
\textsuperscript{152} 41 OKLA. STAT. § 20 (1971). See King-Stevenson Gas & Oil Co. v. Texam Oil Corp., 466 P.2d 950 (Okla. 1970) (cotenant entitled to contribution if others agreed to or authorized the expenditures or were at time of payment personally liable therefor).
act as a volunteer in the absence of other agreement. And similarly, a non-managing cotenant would, in the absence of agreement, act as a volunteer.

The Oklahoma cases seem in accord with this interpretation of the statute. It has been said that normally the tenant who makes improvements with his cotenants' consent should be allowed to recover a pro rata share but not to make a profit. A contract generally providing for the sharing of expenses by the cotenants will govern except as to clearly unnecessary improvements made without a cotenant's consent. Where mineral interests are involved, the basic rule of sharing applies to the developing, extracting, and marketing of oil and gas. A cotenant who has spent his own money in developing the minerals may recover his expenditures from the oil and gas produced. Also, an equitable lien may be awarded against the undivided interest of a cotenant who has not paid his share of the expenses for improvements or repairs.

What if cotenants do not consent to an improvement but later wish to take advantage of its success by sharing in the profits? It has been held they may do so if they pay their proportionate part of the expenses. In such case, however, the tenant who made and paid for the improvement, such as the drilling of an oil well, may retain all proceeds until he has collected enough to satisfy the obligation of the other tenants to pay their share of all expenses to date. As to oil and gas development, this rule has now been modified by an Oklahoma statute, discussed in the section on rents and profits, infra.

While there seem to be no Oklahoma cases directly in point, and few authorities at all, it would appear that insurance would be treated similarly to repairs and improvements so far as sharing the expense is concerned. Without the consent or participation of cotenants, however, it is doubtful that one tenant in common could insure more than his undivided interest. Of course, consent could be inferred where one cotenant has been given general managerial powers by the others. Where joint tenancy or tenancy by the entirety is involved, it may be possible for one tenant to insure the entire premises and then upon loss collect and retain the entire compensation.

\begin{thebibliography}{99}
\bibitem{1} Uncle Sam Oil Co. v. Richards, 60 Okla. 63, 158 P. 1187 (1916).
\bibitem{2} Elling v. Kohler, 150 Okla. 129, 3 P.2d 161 (1933).
\bibitem{3} See Essley v. Mershon, 262 P.2d 417 (Okla. 1953).
\bibitem{4} Mershon v. Essley, 204 Okla. 660, 233 P.2d 293 (1951).
\bibitem{5} Hill v. Field, 384 F.2d 829 (10th Cir. 1967).
\bibitem{6} Wickham v. Skelly Oil Co., 106 F. Supp. 61 (E.D. Okla. 1952), aff'd, 202 F.2d 442 (10th Cir. 1953).
\bibitem{8} So held in Russell v. Williams, 58 Cal. 2d 487, 374 P.2d 827, 24 Cal. Rptr. 859 (1962). Contra as to one tenant collecting and retaining the full amount, Rock County Savings & Trust Co. v. London Assur. Co., 17 Wis. 2d 618, 117 N.W.2d 676 (1962).
\end{thebibliography}
A joint tenant may sell or encumber his interest in the property without consent of his fellow owners. Of course, such sale will result in a severance of the vendor's undivided share of the property and, to that extent, in a termination of the joint tenancy; a mere lease, mortgage (if no foreclosure), or other encumbrance generally will not result in such a severance today. Where tenancy in common is involved, each co-owner may lease his undivided interest without consent of the other owners, and he may maintain an action for cancellation of a lease of his interest without joining the co-owners. A cotenant has no authority to prevent his fellow tenant from exercising possessory rights as to the property either personally or through a lessee. On the other hand, merely by virtue of the co-ownership, one cotenant is given no authority to grant a lease of another's interest or to make a lease of the entire premises. A lease of the whole by one cotenant will ordinarily be effective only as to his undivided share, but such a lease will not be void as against the cotenant who executed it or as against a lessee who had notice of the grantor's limited interest. All the tenants together may make a lease of the premises, but even here the Oklahoma court has said that in reality this grant is several leases by the tenants in common of their undivided separate shares. Similarly, a lease of the whole premises by one cotenant may be ratified by subsequent conduct of the co-owners, such as the acceptance of rent and other benefits thereunder. Where there is no ratification, an attempt to lease the entire premises is invalid as to co-owners who did not join. If the entire premises have been leased, an early Oklahoma case indicated that, at least in a joint tenancy, all the owners had to concur in an election to declare a forfeiture and so state in the required notice to the

163 Knox v. Freeman, 182 Okla. 528, 72 P.2d 680 (1930).
167 Coal Oil & Gas Co. v. Styron, 303 P.2d 965 (Okla. 1956).
168 Riddle v. Ellis, 139 Okla. 123, 281 P. 286 (1929). Cf. Howard v. Manning, 79 Okla. 165, 192 P. 338 (1920) (lessee of particular part of land is trespasser as to cotenants not joining in lease, but lease is valid as against lessor).
171 Harris v. Tucker, 147 Okla. 210, 296 P. 397 (1931) (oral agreement unenforceable because of failure to secure consent of one of cotenants).
Co-ownership of Property in Oklahoma

The present Oklahoma statute states that an oil and gas lease may be canceled by one joint tenant or tenant in common, without the need for the others to join in any notice or demand, if all the cotenants have been made parties to the action either as plaintiffs or defendants.\footnote{173}{12 Okla. Stat. § 230 (1971).}

One tenant may also mortgage or otherwise encumber his interest in the property, but a mortgage of the entire premises will require participation by all owners. A mortgage made only by one cotenant thus does not result in any liability on the part of another cotenant,\footnote{174}{See Mulkey v. Wallrapp, 156 Okla. 233, 10 P.2d 425 (1932). Cf. Hill v. Field, 384 P.2d 829 (10th Cir. 1963).} and foreclosure on such mortgage cannot be attacked by a cotenant.\footnote{175}{Julian v. Yeoman, 25 Okla. 448, 106 P. 956 (1910).}

One cotenant may purchase the outstanding mortgage on the co-owned premises, but such purchase will inure to the benefit of the other cotenants only on their payment of a proportionate share of the purchase price. If the cotenants do not contribute their share during the redemption period of the mortgage, the purchaser-cotenant may foreclose against them on the mortgage to the extent of the contribution they owe.\footnote{176}{1 Okla. Stat. § 21 (1971). On the possibility that one cotenant's taking of co-tenancy property may constitute larceny, see Annot., 17 A.L.R.3d 1394 (1968).}

Rents and Profits

Oklahoma provides by statute that joint tenants and tenants in common may maintain actions against any of their co-owners (or their personal representatives) who have received more than their just share of the rents and profits.\footnote{177}{41 Okla. Stat. § 21 (1971).} The respective shares may, of course, be regulated by contract among the parties.\footnote{178}{See Britton v. Green, 325 F.2d 377 (10th Cir. 1963).} Where not governed by contract, the rules are as follows: (1) Each cotenant, without permission of his co-owners, has the right to enter, possess, and use the premises. This includes the right to drill for oil and gas where the co-ownership is of or includes the mineral interest. Of course, one tenant may not exclude the others from exercising the same rights.\footnote{179}{Dilworth v. Fortier, 405 P.2d 38 (Okla. 1964). Cf. Prairie Oil & Gas Co. v. Allen, 2 F.2d 566 (8th Cir. 1924).}

(2) Where co-owned property is rented to others, the co-owners are all entitled to a proportionate share of rents collected from third persons.\footnote{180}{See Manor v. Liles, 319 P.2d 310 (Okla. 1957).} This applies only to rent actually so collected, and a cotenant himself in possession need not pay rent to the others.\footnote{181}{Neal v. Neal, 250 F.2d 885 (10th Cir. 1957).}
other owners drills a well for oil, or otherwise engages in development of the property, assumes the entire risk of the venture. If it turns out badly, he cannot force the other tenants to share in the expenses and losses.\textsuperscript{182}

(4) Where development of the property does result in profit, the developing cotenant must account to each of the other owners for each one's proportionate share of such return. The developing tenant may withhold an amount to cover his costs of development, operation, and marketing.\textsuperscript{183}

An exception to the rule that there need be an accounting for rent only where rent is actually received from third persons is found in the situation in which one cotenant wrongfully excludes another cotenant from the premises. The wrongdoer co-owner is then liable to the excluded one for that proportion of the fair rental value which the excluded party's interest bears to the whole value; it is then immaterial that no rents have been actually received.\textsuperscript{184} On the other hand, a cotenant not excluding his fellow owners is not required to account to them for their proportion of the rental value, even where rents are actually received, but only for their proportion of those rents actually obtained, less the sums spent on taxes and needed improvements.\textsuperscript{185}

Since sharing in the rents and profits is a normal right of a cotenant, a person dealing with one such tenant is not put on notice that another tenant in common is claiming adversely by reason of such sharing.\textsuperscript{186} At common law, the right to share is not affected by a cotenant's not having agreed to or participated in the original venture that has now produced the revenue. The successful developer-cotenant must, after deducting for his expenses, share his gains with his more timid co-owner who did not agree to the now profitable development.\textsuperscript{187} This rule seems unfair to the developing cotenant, especially since he must bear the full loss if the venture proves a disaster.\textsuperscript{188} The present Oklahoma statute on development of oil and gas interests thus provides that where cotenants disagree on

\textsuperscript{182} Katnig v. Johnson, 383 P.2d 195 (Okla. 1963).
\textsuperscript{184} Mauch v. Mauch, 418 P.2d 941 (Okla. 1966). The wrongful exclusion was here found sufficiently evidenced by statements to attorney for deceased cotenant's estate denying that the decedent's heirs could come on the land and refusing to discuss decedent's interest.
\textsuperscript{186} Bader v. Bader, 207 Okla. 683, 252 P.2d 427 (1953).
\textsuperscript{188} The problem is discussed in Note, \textit{Oil and Gas: Tenancy in Common: Rights as Affected by Spacing Unit Statutes}, 2 Okla. L. Rev. 243 (1949).
whether to drill, the Corporation Commission may on proper application compel the co-owners to pool and develop their interests as a unit, sharing the expenses and risks as well as any profits.\textsuperscript{189} The contribution obligation is enforceable by a lien. Even under its earlier statute, Oklahoma had modified the common law somewhat in this area by providing that a non-developing cotenant must put up his share of development costs in advance or be satisfied with only a royalty interest in the later successful project.\textsuperscript{190} The newer statute, however, gives such a tenant a share in the working interest. Where mining other than the drilling for oil and gas is involved, the general rule applies: the mining cotenant must account for the profits, less reasonable expenses, to his nonparticipating co-owners.\textsuperscript{191}

It has been said that a cotenant developing or operating the common property himself stands in the relation of trustee to the other owners and thus is under the duty of accounting to them.\textsuperscript{192} An equitable action of accounting may be brought against the cotenant who fails to fulfill this duty.\textsuperscript{193} As to what are "reasonable expenses" for which the developer-cotenant may make deduction from the profits, the leading Oklahoma case\textsuperscript{194} indicates a broad definition. Warehouse charges incurred in order that supplies might be readily available and the cost of drilling a well that proved unprofitable were found to be reasonable and necessary.

Where co-owned property is sold, each cotenant is also entitled to his share of the proceeds, again subject to deductions for necessary expenses.\textsuperscript{195} The same rule applies to sale of crops grown on co-owned property,\textsuperscript{196} and an agreement by which only one of two co-owners will profit from the sale of such a crop is a fraud on the nonprofiting, nonconsenting owner.\textsuperscript{197} Similarly, one cotenant who has received an offer of purchase of the property commits fraud if he fails to disclose the whole truth about the offer to his fellow owner.\textsuperscript{198} The same rights and obligations of all owners apply to an oil and gas lease of the premises, and all cotenants should join in an action to bring a forfeiture of the lease.\textsuperscript{199} There should likewise be joinder

\textsuperscript{189} 52 Okla. Stat. \S\ $87.1(d) (1971).
\textsuperscript{190} 52 Okla. Stat. \S\ $87(c) (1971).
\textsuperscript{191} Black Crystal Coal Co. v. Garland Coal & Min. Co., 267 F.2d 569 (10th Cir. 1959).
\textsuperscript{193} Martin v. Clem, 138 Okla. 245, 280 P. 826 (1929).
\textsuperscript{194} Moody v. Wagner, 167 Okla. 99, 23 P.2d 633 (1933).
\textsuperscript{195} Tiffany v. Tiffany, 200 Okla. 670, 199 P.2d 606 (1948).
\textsuperscript{196} Pattison v. Pattison, 207 Okla. 46, 247 P.2d 514 (1952).
\textsuperscript{197} Logan v. Oklahoma Mill Co., 14 Okla. 402, 70 P. 103 (1904).
\textsuperscript{198} Heggem v. Kilpatrick, 133 Okla. 145, 271 P. 643 (1928).
\textsuperscript{199} Sadler v. Public Nat'l Bank & Trust Co., 172 F.2d 870 (10th Cir. 1949) (heirs and successors of deceased lessor should unite in enforcing forfeiture of lease for breach of covenant).
of all owners in an action for trespass or other injury to the co-owned property.\textsuperscript{200} In order to protect his ownership, one cotenant is given the right to sue by himself to recover property from a third person, but his recovery will be limited to the interest in which he shows that he has title superior to that of defendants.\textsuperscript{201}

\textit{Rights of One Cotenant}

\textit{Title by Adverse Possession}

As noted in the preceding section, one cotenant may by himself sue in ejectment or otherwise recover property owned by himself and others. Supposedly, his recovery is only of his own interest, but if the defendant shows no title, the single cotenant may be allowed to take possession of the entire estate, holding in subordination to the rights of his fellow owners.\textsuperscript{202} As this procedure indicates, co-owners of property are considered to stand in a relation of mutual trust, every presumption being that one such tenant is always acting for the others as well as for himself and not in hostility to the others.\textsuperscript{203} This reasoning stands behind the difficulty of one cotenant showing that his possession was adverse as against his cotenants. The difficulty receives statutory support in Oklahoma from the provision that one cotenant is not entitled to recover real property from another such tenant unless he shows that the other has in some way denied his right to possession or done some act amounting to such denial.\textsuperscript{204} The statute of limitations on such actions would thus not start to run, and adverse possession could not begin, until such a denial occurred.

Accordingly, Oklahoma has held that the possession of one cotenant is assumed to be constructive possession of the others and that the mere holding by one co-owner will not be considered adverse to his fellow owners until his conduct in some way gives notice to them that he is repudiating or disputing their rights.\textsuperscript{205} The conduct, in order to start the statute running, must be such as would put the reasonable man on inquiry as to whether his rights are being denied. Normally, it will have to amount to

\textsuperscript{200} Haught v. Continental Oil Co., 192 Okla. 345, 136 P.2d 691 (1943) (joinder required in action for trespasses on common land). \textit{See also} Sanguin v. Wallace, 205 Okla. 28, 234 P.2d 394 (1951) (cotenants may maintain action in own names for damages to property).

\textsuperscript{201} Moppin v. Norton, 40 Okla. 284, 137 P. 1182 (1914).

\textsuperscript{202} Smith v. Blunt, 84 Okla. 225, 202 P. 1027 (1922).


\textsuperscript{204} 12 OKLA. STAT. § 1144 (1971). The general statute of limitations on actions to recover real property is 12 OKLA. STAT. § 93 (1971).

an ouster or refusal of entry, although other circumstances surrounding entry or possession, such as statements of ownership or attempted conveyances by the alleged adverse possessor, may be sufficient to show the required denial or repudiation. There must be some disclosing of the adverse possessor’s hostile intent, as by notice by ouster. The notice of repudiation, it has been said, must be brought home to the dispossessed co-owner. Mere possession, no matter how complete, cannot suffice to put the nonpossessing co-owners on inquiry.

The actions showing the hostile intent need not, however, precede or be contemporaneous with the initial entry of the adverse possessor; they may follow such entry. The actions must be totally irreconcilable with recognition of rights of the cotenant(s). One case held insufficient the taking of profits and paying taxes, plus statements to two persons that the cotenant’s interest had been bought by the possessor. But collecting rents, refusing to account to the co-owner, and contesting the co-owner’s rights in an ejectment action have been found to amount to ouster. Even where the possession is clearly adverse, it will be interrupted by the filing of an action against the possessor, or by an adjudication that the possessor and the one against whom he claims hold as tenants in common.

Where a severed mineral interest is involved, one cotenant can acquire another’s interest adversely only by opening and operating a mine or well for the statutory period. (This rule applies, though, only where severance of mineral rights from surface ownership has occurred prior to the start of the adverse possession. Otherwise, the adverse possession of the surface will suffice to transfer ownership of both surface and sub-surface.)

211 See St. Louis-San Francisco Ry. v. Walter, 305 P.2d 90 (10th Cir. 1962).
215 Moore v. Harjo, 144 P.2d 318 (10th Cir. 1944).
Executing and recording oil and gas leases, apparently even to the entire mineral interest, will not suffice.\(^{217}\) The owner of the surface rights may hold adversely, like anyone else, to the owners of severed mineral interests, and he is not even within the more stringent rule on adverse possession that applies among cotenants.\(^{218}\) But those who do hold a mineral interest jointly or in common stand in a relation of mutual trust, so that if one should acquire an adverse title or rights of an adverse claimant, he will hold them for the benefit of all the cotenants.\(^{219}\)

**Title by Purchase or Other Conveyance**

Naturally, there is no doubt that one co-owner may, in a transaction devoid of deceit or oppression, buy the interests of his fellow owners and thus terminate the cotenancy. But the aforementioned duty of mutual confidence among co-owners makes the transaction more dubious where the one tenant has purchased at the time of, or following, a tax sale or mortgage foreclosure. Perhaps the most clear-cut case of a duty on the part of a cotenant is that in which he has specifically been designated an agent of the cotenancy for the purpose of selling or otherwise dealing with the property. Such agent-cotenant must then clearly act with the utmost honesty and good faith toward his principals.\(^{220}\) Toward the other end of the spectrum is the situation in which a onetime co-owner has divested himself of all interest, in an aboveboard transaction, and subsequently purchases for himself other interests in the same property; in such purchase, he acts under no special duty.\(^{221}\)

Aside from these rather extreme situations, the right of one cotenant to purchase property at, for instance, a tax or mortgage foreclosure sale will largely depend on two factors: (1) whether the sale was necessitated, at least in part, by some failure on the part of the purchaser, as where he was under a duty to pay the taxes, and (2) whether the sale was open, aboveboard, and without fraud or concealment as to the other cotenants. Thus, it has been held that one member of the former cotenancy may purchase the res himself at a mortgage foreclosure sale if he pays adequate consideration and there is no deceit or collusion.\(^{222}\) But such transactions will be carefully scrutinized, and where one tenant is under express contractual obligation to pay off the entire mortgage indebtedness, he will not

\(^{218}\) Ball v. Autry, 427 P.2d 424 (Okla. 1966).
\(^{220}\) Such a case was West v. Madansky, 80 Okla. 161, 194 P. 439 (1920).
\(^{221}\) Reed v. Whitney, 197 Okla. 199, 169 P.2d 187 (1945).
\(^{222}\) Ammann v. Foster, 179 Okla. 44, 64 P.2d 653 (1937).
be allowed to let foreclosure occur and have a straw man purchase the property for him—such purchase will be held to be for benefit of all the cotenants.\(^{223}\)

But seldom, in fact, has a purchase by a former cotenant at a mortgage foreclosure sale been overturned or held to be for the benefit of all cotenants. There is general language in some opinions that supports making such a purchaser hold in trust for the co-owners,\(^{224}\) but this normally has not occurred since it can often be found that the other cotenants were willing for the foreclosure (or at least totally unable to prevent it) and that the one tenant, without fraud, simply outbid all others at the foreclosure sale.\(^{225}\) Tax sales, on the other hand, have often produced different results since there is seldom the willingness on the part of all tenants to let the land be sold. The general rule is that one who is obligated to pay taxes on land or other property may not, so as to defeat the interests of his cotenants, obtain title from a sale of the property for taxes.\(^{226}\) If he does so acquire title, he will be considered to hold it in trust for all members of the cotenancy,\(^{227}\) and until the trust is clearly repudiated, no statute of limitations will run against the other tenants.\(^{228}\) A fortiori, the rule applies where one tenant holds his fellow tenant’s interest in trust for him, and attempts to purchase that interest at a tax sale.\(^{229}\) Even though each tenant in common is obligated only to pay a proportionate share of the property taxes, the rule applies to any cotenant who was under a duty to pay at least part of the taxes and fails to do so; some language would base this partly on a “moral duty”\(^{230}\) to pay all taxes where able rather than let the land be sold.\(^{231}\) The rule thus applies although the purchase was made by an agent of the cotenant,\(^{232}\) or even though the cotenant obtained the property from a stranger who had purchased it at the tax


\(^{225}\) As, for instance, in Johnston v. Dill, 165 Okla. 165, 25 P.2d 283 (1933).

\(^{226}\) Pierce v. McGinley, 274 P.2d 59 (Okla. 1954). The apparent difference in the Oklahoma court’s attitude toward tax sales and mortgage foreclosure sales is noted in Curry v. Frerichs, 194 Okla. 230, 149 P.2d 95 (1944).

\(^{227}\) Ellis v. Williams, 297 P.2d 916 (Okla. 1956).

\(^{228}\) McGee v. Harrison, 277 P.2d 161 (Okla. 1954). The purchaser could by clear repudiation begin to hold adversely to the other tenants.

\(^{229}\) Grison Oil Corp. v. Lewis, 175 Okla. 597, 54 P.2d 386 (1936).


\(^{232}\) See Myers v. Parkins, 412 P.2d 136 (Okla. 1965). But see Wilcox Oil Co. v. Schott, 327 P.2d 471 (Okla. 1958), where fact that agent purchased at tax sale in own name seems to have been one factor in deciding that title did not inure to cotenants.
It is sometimes said that the purchase under such circumstances will be looked upon as one mode of paying the taxes. The rule, however, does not apply where the purchasing cotenant was under no obligation to pay any of the taxes for which the land was sold, as where by contract this was not part of that tenant's duty or where the taxes for which the land was sold were on the surface interests and the purchaser had rights and obligations only as to the sub-surface.

It is generally agreed, as limitations on the above rules, that (1) in order to take advantage of a cotenant's purchase at a tax or other sale, fellow tenants must within a reasonable time tender their proportionate share of the purchase or redemption price, and (2) a tax title acquired by a cotenant is not void but is, at most, voidable, and thus good title may be conveyed to a bona fide purchaser.

**Liability of Cotenants to Third Parties**

Just as rents and profits should be shared by cotenants, each receiving his proportionate part, so should recovery for damage to the property by a third party be shared, except as one co-owner might be able to prove special damage to his possession or his interest. The Uniform Commercial Code as adopted in Oklahoma specifically provides that a warehouseman will be liable for any damages to anyone caused by the omission from a warehouse receipt of the fact of joint or common ownership of goods. A person who knowingly deals with a cotenant is bound to ascertain the rights and claims of the fellow tenants to the property involved.

Where landowner's liability applies to property in co-ownership, there may be joint and several liability of the owners. As between the

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236 See Relf v. Thompson, 188 Okla. 209, 107 P.2d 536 (1940), where person acquiring tax sale certificate was held not precluded from having himself substituted as holder of certificate of sale from land office despite having been a cotenant of mineral interests with original holder.
237 See Wilcox Oil Co. v. Schott, 327 P.2d 471 (Okla. 1958), where, however, because of delay and other factors, the cotenants were not allowed to take even upon tendering their share of the price. Cf. Rex Oil Refining, Inc. v. Shirvan, 443 P.2d 82 (Okla. 1967). See generally W. Burn, supra note 1, at 231-32.
239 12A OKLA. STAT. § 7-202(2) (b) (1971).
241 See Tanci v. Meghrigan, 12 N.J. 267, 104 A.2d 689 (1954). Note, however, that such liability is often based largely on possession or use of the premises. An indemnity action
co-owners, there is a possible right of contribution, where generally allowed by tort law, against any owner who has not paid his proportionate part. The presumption is that the loss should be shared equally, but this may be rebutted by bringing the fault home solely to one or some of the cotenants, or showing the liability resulted solely from activities of less than all the tenants. In instances where the fault can be attributed to only some of the owners, there may be indemnity over against the owner(s) at fault by those not primarily responsible if the latter have been made to pay.

Right to Bring Partition Action

The method for bringing a partition action in Oklahoma is specified by statute. The petition must describe the property and, if known, the respective interests of all owners. Creditors may be made parties and defendants in their answer may deny the interests of any plaintiffs or defendants. Ordinarily, any cotenant may at any time bring a partition action, the purpose and effect of which is to terminate the joint ownership of the property and the relation of the parties thereto. The right to bring a partition proceeding is not based on contract but on statute, or in the absence of statute, on general equity principles. Normally, the right is absolute, and it cannot be defeated by another cotenant's showing that his income will be lessened by the partition. However, a cotenant out of possession cannot bring an action for partition against a co-owner who is holding adversely to him unless he joins therewith an action for possession. Also, the property of a partnership is not a proper subject for partition until the partnership's liabilities are determined, provision is

might be brought by a nonpossessing cotenant held liable for condition of the premises, with the co-owner having the possession or control being defendant in such action.

As indicated in note 200 supra and accompanying text, where suit is brought for trespass and/or damage to co-owned property, all owners should join in the action. Haught v. Continental Oil Co., 192 Okla. 345, 136 P.2d 691 (1943) (joinder of husband and wife required in action for trespasses to property they owned as tenants in common). But cf. Moplin v. Norton, 40 Okla. 284, 137 P. 1182 (1914) (each tenant in common may sue separately for recovery of his interest). See generally Note, Pleading: Joinder of Causes of Action, Parties and Defenses, 3 O.K.L. Rev. 456, 460 (1950).


244 12 O.K.L. STAT. § 1503 (1971).


247 Id.


249 Chouteau v. Chouteau, 49 Okla. 105, 152 P. 373 (1915).
made for payment of them, and the partners' respective interests are settled among themselves. 250

The action for partition of real property, including that provided by the Oklahoma statutes, is purely an equitable one, 251 and thus the relief may be denied if extreme hardship would result or if the requesting party has been guilty of some wrongful conduct in regard to the cotenancy. 252 Ordinarily, hardship on other tenants is no defense, and certainly, it does not prevent the bringing of the action.

The situation is somewhat different in regard to personal property. Since the statutes make no specific provision for such partition, the power to grant relief, although existing in a court of equity, is to be exercised only where justified by some loss of value, mismanagement, irreconcilable differences among the parties, or other unusual circumstances. 253 Homestead property is held in a peculiar type of joint ownership, created by the state constitution and statutes and unknown to the common law. The homestead right is held by husband and wife for themselves and the family and is incapable of partition between the spouses. 254

Partition of co-owned mineral interests may be had, 255 and co-owners of surface rights may have partition made despite the surface ownership being subject to a mineral lease. 256 But one owning just an “overriding royalty”—a percentage of the lessee’s working interest in an oil and gas lease—has no sufficient possessory rights to support a partition action. 257 Neither is the remedy of partition available where two owners already own separate physical portions of property and one has no interest in the other’s part. 258 Furthermore, a tenant may surrender, at least for a reason-

250 Krone v. Higgins, 195 Okla. 380, 158 P.2d 471 (1945) (stated to be true as to both real and personal property).
252 Hassell v. Workman, 260 P.2d 1081 (Okla. 1953). A denial of partition was here upheld since the property was being satisfactorily managed by the cotenant opposing partition, the property could not be given a purchaser until expiration of a lucrative lease six months after trial of the partition action, and the income tax on proceeds of a sale would be substantial and cause hardship to the opposing tenant. The relief was denied without prejudice to the future right of either party to seek the same remedy by showing a change in conditions.
257 De Mik v. Cargill, 485 P.2d 229 (Okla. 1971), citing Meeker v. Ambassador Oil Co., 308 F.2d 875 (10th Cir. 1962), which stated that an overriding interest involves neither corporeal nor possessory rights so as to support an ejectment action. The court in De Mik said that partition will only lie where persons hold property as tenants in common, joint tenants, or coparceners.
able time, his right to have partition made if he enters a contract expressly or impliedly so agreeing.\textsuperscript{260}

In order to partition property, the Oklahoma court must acquire jurisdiction over all owners of interests in the res, even if their interests are contingent. If jurisdiction is not acquired over an owner, the judgment will be void as to him and may be vacated on that ground either by him or by another cotenant.\textsuperscript{260} Where proceedings for distribution of a decedent's estate are pending in a county court which has jurisdiction over the estate, another district court lacks jurisdiction to order partition of some of the estate property.\textsuperscript{261} But, partition and sale of a minor's interest through a guardian is not necessarily void because ordered by a court other than the one that first had jurisdiction over the guardianship.\textsuperscript{262}

Where a contract, including an attorney's contingent fee contract, calls for one party to receive an undivided interest in property, that party, on completion of his part of the bargain, may bring a partition action as to the property.\textsuperscript{263} Where partition occurs, it is not essential that each tract or piece of property be divided so as to give every cotenant his interest therein; the tracts or other properties may be treated as a whole and partitioned accordingly.\textsuperscript{264} But each party to the partition action who is found to have a valid interest in the premises must ordinarily be accorded his separate share, not a share in common with others.\textsuperscript{265}

\textit{Relief Granted in Partition Action}

The procedure for granting relief in a partition action is outlined by Oklahoma statutes.\textsuperscript{266} The court, after determining the interests of all parties, shall make an order setting forth these interests.\textsuperscript{267} The court shall then appoint three commissioners to make the actual partition,\textsuperscript{268} and the

\textsuperscript{260} McInteer v. Gillespie, 31 Okla. 644, 122 P. 184 (1912). The court said that an agreement not to partition can be implied wherever the purpose for which the property was acquired would be defeated by such a division. But it seems the court would consider possible changes in conditions since the original acquisition.

\textsuperscript{261} See Frost v. Blockwood, 408 P.2d 300 (Okla. 1965).


\textsuperscript{263} Walker v. Siggens, 118 Okla. 266, 248 P. 567 (1926) (sale was through partition by guardian appointed by court of county of minor's domicile).

\textsuperscript{264} Emery v. Goff, 203 Okla. 618, 225 P.2d 164 (1950).

\textsuperscript{265} See Perry v. Jones, 48 Okla. 362, 150 P. 168 (1915). See also Clark v. Mercer Oil Co., 139 Okla. 48, 281 P. 283 (1929) (if personality is not capable of division in kind, distribution to owners in common will be made).

\textsuperscript{266} Melvin v. Shaw, 418 P.2d 697 (Okla. 1966).

\textsuperscript{267} 12 OKLA. STAT. §§ 1505-16 (1971).

\textsuperscript{268} 12 OKLA. STAT. § 1506 (1971).
commissioners shall proceed to do this if it can be done without manifest harm to the property; otherwise, they shall make a valuation of the property and report this to the court. Any party may file exceptions to the commissioners' report, and the court itself may set it aside, either then appointing new commissioners or referring the matter back to the same ones. Otherwise, the court shall, in cases where partition was made by the commissioners, render judgment that this division be effectual forever.

Where partition was not made by the commissioners, either of two things may happen: (1) One or more of the parties may elect to take the property at its appraised value, and they may do so upon payment to the other parties of their proportion of that value. (2) If no party elects within the required time to take the property at its valuation, or if several elect in opposition to one another to take the property, the property must be sold as if on execution, with the limitation that no sale can be made for less than two-thirds of the valuation fixed by the commissioners. A catch-all statutory provision states that the court in the partition action may make any order necessary to an equitable division of rights.

The court does have power, where hardship would be extreme, to deny relief altogether to the petitioning party in a partition action. But ordinarily, the right of a co-owner to request partition and obtain some relief is considered absolute. Actual physical partition of the property will usually be granted if practical; for instance, it will be granted as to oil and gas rights if there has been no development on or near the property and if there is no reason to believe one portion of the tract is more valuable than another. Where physical division in an equitable manner is impossible, for example, because of the diversity of character of interests owned by various parties and because some of the interests are merely speculative possibilities, sale of the premises and distribution of the proceeds is proper. Ordinarily, where appraisal is made for the purposes of

276 Wolfe v. Stanford, 179 Okla. 27, 64 P.2d 335 (1937).
sale, the surface and mineral interests, if severed, will be appraised separately\(^{279}\) and sold separately.\(^{279}\)

In the first instance, it is for the commissioners to decide whether the land can be equitably divided. The court errs even in directing them that mineral interests cannot be partitioned along with the surface and thus that appraisal will be necessary, where the land is not known to contain any minerals.\(^{280}\) Where the commissioners are not unanimous in their report, ordinarily the findings of the majority will be accepted.\(^{281}\) Although the court is not bound to accept any findings of the commissioners, it will reject such findings, for instance, on the ground of unequal allotment, only in cases of clear error.\(^{282}\) The court does have an obligation to hear any relevant evidence that might not have been considered by the commissioners, as on past dealings and conduct of the cotenants.\(^{283}\) Once the court confirms the report of the commissioners, the objection can no longer be raised that the commissioners were not properly sworn.\(^{284}\)

Appeal may be taken from the court’s judgment in the partition action, but the lower court’s orders will be set aside only on a showing of substantial error and substantial prejudice resulting therefrom.\(^{285}\) Thus, a lower court’s ruling that physical division is unfeasible and that sale of property must occur will normally be upheld, even where a dwelling house is a portion of the premises.\(^{286}\) An order for partition is not a consent judgment as to which complaint cannot be made even if the complainant joined in the prayer for partition.\(^{287}\) Where an appeal is taken from the court’s


\(^{279}\) Coker v. Vierson, 170 Okla. 528, 41 P.2d 95 (1935). But see Jones v. Hayton, 329 P.2d 1056 (Okla. 1958), where surface and mineral rights were sold together after a higher bid had been received for them than the total of the bids received for the separate mineral and separate surface rights. The Jones case would seem to show that this is an area where the court has considerable discretion.

\(^{280}\) Collier v. Collier, 184 Okla. 38, 84 P.2d 603 (1938).


\(^{282}\) Cooper v. Long, 115 Okla. 286, 244 P. 167 (1926).

\(^{283}\) See Herron Trust v. Swarts, 361 P.2d 280 (Okla. 1961) (defendant’s allegation that if property were publicly sold it would bring more than appraised value was in effect an exception and should have been considered by court). See also Tracy v. Tracy, 76 Okla. 161, 184 P. 81 (1919) (in action to set aside deeds, was error to sustain objection to evidence that partition agreement was made partly to defraud plaintiff).


\(^{286}\) See Williams v. Skinner, 195 Okla. 321, 157 P.2d 181 (1945) (court properly ordered sale of tract including dwelling house). On the one hand, a court may be reluctant to order sale of a dwelling if some owner-occupants object. On the other hand, it is a good example of the type of property that is difficult to partition by actual physical division.

\(^{287}\) Clement v. Ferguson, 287 P.2d 207 (Okla. 1955).
order confirming a sale in lieu of physical partition, delivery of the deed to the purchaser may be delayed. But the deed, if the order of sale is subsequently affirmed, will take effect by relation as of the day of sale, and the buyer is entitled to all rents and profits as if confirmation and conveyance had been contemporaneous with his purchase. It has been ruled that the money paid by a stranger to partition proceedings who purchases property at a “partition sale” must be deposited, by the sheriff who initially receives it, with the court clerk’s office for distribution.

Together with ordering partition or sale, a court may make such other orders as necessary to adjust the rights of the parties equitably. For instance, an accounting of past rents and profits may be ordered, but this will normally be done only where such relief is requested or evidence relating thereto is at least offered. Normally, when physical division occurs, the court will attempt to give each party his just share—considering the value, not merely the size, of the property. Sometimes it may prove impossible to make a completely equitable division of the property itself, even though physical division is basically practicable. In such a situation, the court may require one party who is allotted a share of greater value than that to which he is entitled to pay a sum—called “owlety”—to the other former cotenants, thus equalizing the amounts received by each party. If this sum cannot be paid at once, the court may charge it as a lien against the share of the property that is considered excessive.

Aside from having the right to bring partition proceedings in court, members of a cotenancy may, of course, terminate their relationship by a mutual agreement of partition, but although there always exists the possibility of specific performance in equity, such a contract is usually considered within the Statute of Frauds. Oklahoma law, generally in accord with that of other jurisdictions, thus provides for creation, maintenance, and termination of the basic forms of co-ownership.

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288 Harris v. Stevens, 84 Okla. 196, 202 P. 1024 (1922).
290 See Cary v. Cary, 202 Okla. 244, 212 P.2d 156 (1950) (was error to require an accounting where neither party had offered relevant evidence or requested such relief).
292 Id. Where some cotenants have paid more than their share (proportionately) of taxes or expenditures on the property, this should be considered in determining the amount of property or proceeds each co-owner receives upon partition. Manor v. Liles, 319 P.2d 310 (Okla. 1957). If possible, when physical division occurs, a cotenant will be given the portion he improved.
293 See W. BURG, supra note 1, at 233-34. On the extent to which the right to judicial partition may be affected by agreement of the parties, see Annot., 37 A.L.R.3d 962 (1971).