



# PARTITION ACTIONS

# 101

An Introduction to Statutes, Remedies, and  
Resolution of Partition Actions

# AGENDA

- 01** **PRE LITIGATION**  
How partition actions come up,  
when you might see them
- 02** **REMEDIES, JURY TRIAL, SALE**
- 03** **PARTITION REFERENCES**
- 04** **POST SALE & CLOSING THOUGHTS**

# SPEAKERS



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# TYPES OF PARTITION



In-kind CCP  
872.810 (e.g.,  
raw land)



By court  
ordered sale  
CCP 872.820.

See Handout item I  
for exemplar  
complaint for  
partition by sale



Via appraisal &  
buy-out (mutual  
consent). CCP  
873.910

## WHO ARE THE STAKEHOLDERS?

### OBTAIN A LITIGATION GUARANTEE TO:

- ▶ Identify all *owners* of the subject property (including entities)
- ▶ Identify all *lienholders* concerning the subject property
- ▶ Ascertain which owner(s) you represent (and run conflicts against the other stakeholders you do not represent – *i.e.*, adverse parties)

# WHAT PROPERTY IS BEING PARTITIONED?



A litigation guarantee will contain a precise legal description



The Lis Pendens must include a full legal description as shown in litigation guarantee. CCP 405.20  
[See Handout Item II for exemplar Lis Pendens]

Rules regarding the manner and timing of filing, service and recordation of Lis Pendens must be strictly followed.  
See CCP 405.22, 405.23



# TIPS RE FILING A PARTITION COMPLAINT

## Filing County

You must file complaint within the county in which the subject property is located. CCP 872.110(b)(1).



## Litigation Guarantee

Attach and incorporate litigation guarantee by reference to enable Court to identify and prioritize all lienholders. CCP 872.630

## Naming Owners

List all owners, the manner in which title is held and their respective amount of ownership (e.g., "Defendant is a tenant-in-common and, on information and belief, maintains a 20% ownership interest in the Property subject to partition").

## Remedies

Consider all remedies that might apply and include in the prayer for relief (e.g., costs for common benefit including lit guarantee, attorney's fees, accounting, appointment of referee, etc.) [See Handout Item III for exemplar Complaint for partition by court ordered sale]

# REMEDIES JURY TRIAL & SALE



# STATUTES DEALING WITH APPOINTMENT OF A REFEREE



873.010

## Code of Civil Procedure Section 873.010

A Partition Referee is appointed to divide or sell the property as ordered by the court. The court instructs the Referee, sets the compensation of the Referee, and determines whether a bond is required of the Referee.

873.050

## Code of Civil Procedure Section 873.050

The following persons are ineligible to be appointed as Referee:

- A clerk or deputy clerk of the court
- A former or present partner or employee of the judge
- A relative within the third degree of the judge or the judge's spouse or the spouse of such a relative
- An owner with any interest in the property

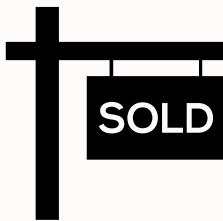
# GENERAL POWERS OF A REFEREE



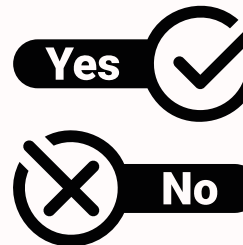
A Referee may hire surveyors, engineers, appraisers, attorneys, real estate brokers, auctioneers, and others. Code of Civil Procedure section 873.110



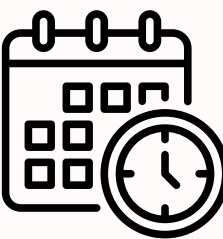
The Referee shall report to the court the details of any sales. Code of Civil Procedure section 873.710.



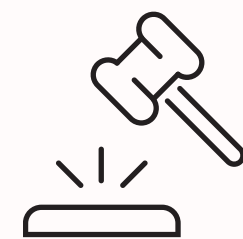
If the property is to be sold, the Referee manages the sale. Code of Civil Procedure section 873.520



The Referee (or the purchaser or any party) may move the court to confirm or set aside the sale. Code of Civil Procedure section 873.720



The Referee may set the manner, terms, and conditions of sale consistent the statutory structure and the court's prior orders. Code of Civil Procedure section 873.610.



Following court confirmation of the sale, the Referee executes the conveyance or other instrument to transfer the property. Code of Civil Procedure section 873.750 and 873.790.

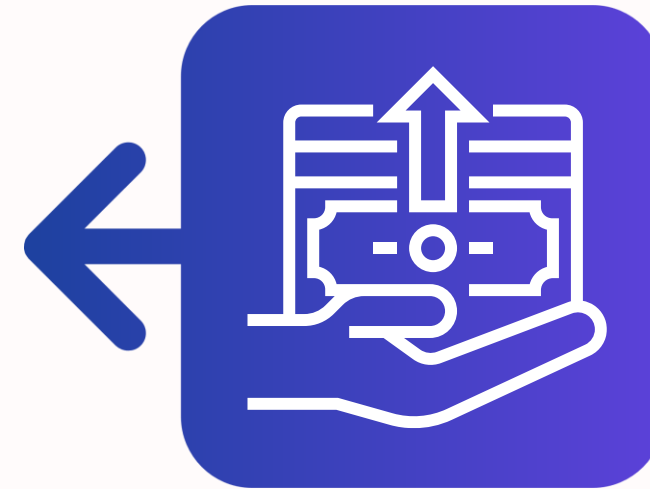
The Referee receives the sale proceeds from escrow of the sale. Code of Civil Procedure section 873.750



The court retains jurisdiction to determine the claims of the parties to the sale proceeds. Code of Civil Procedure section 873.750.



## WHAT HAPPENS TO THE SALE PROCEEDS?



The Referee disburses the sales proceeds as ordered by the court. Code of Civil Procedure section 873.810.



The court may direct the Referee to gather evidence ("further testimony") to assist in determination of the claims of the parties. Code of Civil Procedure section 873.850

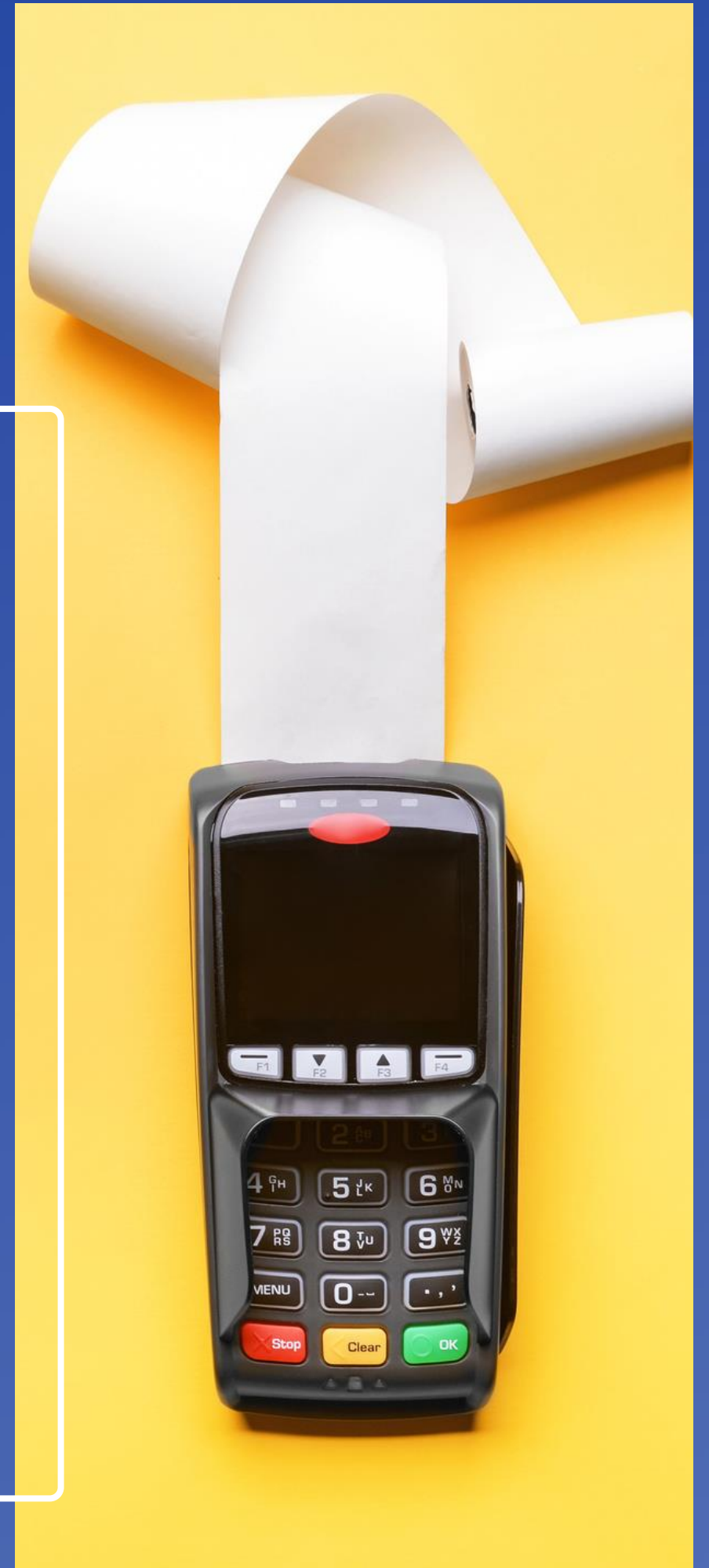
# HOW IS A REFEREE PAID?

The “fee and expenses of the referee” are defined as part of the “costs of partition”. Code of Civil Procedure section 874.010

“Costs of partition” also includes the reasonable attorney’s fees incurred or paid by a party for the common benefit. Code of Civil Procedure section 874.010.

The court apportions the costs of partition (including the Referee’s costs and fees) “among the parties in proportion to their interests or make such other apportionment as may be equitable.” Code of Civil Procedure section 874.040

Payment of the costs of partition and the expenses of sale are paid ahead of the interests of lien claimants in the property and the ownership shares of the owners. Code of Civil Procedure section 873.820



# THANK YOU

Questions?



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