

ROGER STALEY SEMINAR OUTLINE – PARTITION
CASES OF INTEREST

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The following are a few cases that I found of interest that may address some of your current concerns or those in the future:

***Barden v. Pappas*, 532 So. 2d 707 (Fla. 5th DCA 1988)** – A possessor of a life estate cannot seek partition from a remainderman. The estates held by the parties must be joint interests. “Partition means a severance of interests which to some extent at least are concurrent. It refers to such types of co-ownerships as tenancies in common and joint tenancies.” *Id.* at 709.

***Schroeder v. Lawhon*, 922 So. 2d 285 (Fla. 2d DCA 2006)** – Deals with a partition action where the property was determined to be able to be partitioned. Sale of the property was not deemed necessary. The Second District discusses the role of the partition commissioners, pursuant to §64.061, Florida Statutes and how their report influences the ultimate decision made by the trial court.

***Haddad v. Hester*, 964 So. 2d 707 (Fla. 3rd DCA 2007)** – A party may waive its right to partition by written agreement. In this case, the former husband waived his right to partition of a vacation home, via a Marital Settlement Agreement. The MSA essentially created a life estate in the former spouses, with the remainder held by the children of their marriage.

***Vinson v. Johnson*, 931 So. 2d 245 (Fla. 1st DCA 2006)** – A provision in a Last Will and Testament, that the estate "shall not be subject to partition or forced sale by any heir, but shall only be sold upon agreement of all heirs" constitutes an unlawful restraint on alienation of real property.

***Fernandez-Fox v. Reyes*, 79 So. 3d 895 (Fla. 5th DCA 2012)** – Attorneys’ fees may be awarded to counsel for the parties and taxed against the parties’ interest in the property to be sold. §64.081, Florida Statutes, provides the methodology of determining the amount of fees to be awarded.

Every party shall be bound by the judgment to pay a share of the costs, including attorneys' fees to plaintiff's or defendant's attorneys or to each of them commensurate with their services rendered and of benefit to the partition, to be determined on equitable principles in proportion to the party's interest. Such judgment is binding on all his or her goods and chattels, lands, or tenements. In case of sale the court may order the costs and fees to be paid or retained out of the moneys arising from the sale and due to the parties who ought to pay the same. All taxes, state, county, and municipal, due thereon at the time of the sale, shall be paid out of the purchase money.

§64.081, Florida Statutes. “The award is based upon “ [t]he service performed, the responsibility incurred, the nature of the service, the skill required, the circumstances under which it was rendered, the customary charges for like service, the amount involved, and the ability of litigants to respond.” *Fernandez-Fox* 79 So. 3d at 896.