

*guiding you through life's **most crucial** legal decisions*

Fall 2020

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Co-Owning Land: What is a Partition Action?

People can end up owning land or other real estate together in a number of different ways. It may be because they purchased the property together, it was gifted to them together, or they inherited the property together. While sometimes this starts out with the best intentions, it is not uncommon for co-owners of property to disagree on the ownership or management of the property. Eventually, a **partition action** may be the solution to resolve these diverging interests.

A partition action is a court action to resolve the co-ownership of land among property owners who disagree with each other. The partition action begins with one of the parties filing a summons and complaint pursuant to Minn. Stat. Chapter 558.01. Once the partition action begins, the court will determine whether the property can be equitably divided in-kind (meaning each owner receives real estate at the end of the action), or whether the property must be sold because in-kind division is impracticable (a "partition by sale").



A common example would be siblings that have inherited a house or farmland from a parent. One of the siblings may feel strongly that the property should not be sold for sentimental or economic reasons. Another sibling may not want to be involved with the real estate for the long-term due to the ongoing maintenance responsibilities and expenses or because they would rather have their inheritance liquidated. In the case of a house, a partition by sale would almost certainly be the outcome. In the case of farmland, an in-kind partition may be possible depending on the number of acres and owners.

Once the partition action gets started, the court will appoint three referees to determine what each owner's interest is and what the property is worth. The referees are disinterested people in the community, such as attorneys, appraisers, realtors, or others familiar with similar property.

One of the downsides to a partition action is that the owners lose a great deal of control over the process. They may not end up with the property they think they are entitled to or any property at all if it is a partition by sale. A court partition action is also often costlier than other remedies that are available to the property owners.

Instead, the owners should first determine if they can work together to come up with a plan for dissolving their ownership interests. This could be done through a mediation or by working with an experienced real estate attorney. In most cases, this is the best option for property owners as it typically allows them to maintain more control over the process and both parties can walk away meeting some of their objectives.

What Happens to an LLC When the Owner Dies?



Death is almost always a complicated event for the survivors, who have not only emotional but also logistical considerations to manage. However, when an owner (typically called a member) of a limited liability company (LLC) dies, it exacerbates the difficulties for the surviving members. In addition to bearing the loss, they must determine whether the LLC can or even should continue.

These questions are just a handful of the issues that should be considered as part of an LLC business succession plan. Failure to address these issues and implement the proper documentation could result in conflict within the business, conflict within the family, or even the closing of the business—which may be completely opposed to the members' original intent.

To truly answer what happens to an LLC after a member dies, you must consider a number of factors and their interactions, including the language of the company's operating agreement, the state law that governs the entity, and the personal estate planning tools the deceased member employed.

LLCs and Operating Agreements

The structure of an LLC is one of the elements that creates complexity when determining the outcome of an LLC member's death. LLCs provide substantial flexibility in addressing matters of ownership, management, and financial rights, which are primarily governed by a contract called the operating agreement. The execution of an operating agreement is not usually mandated by state law, but it is often the most critical component when dealing with an LLC member's death. In the absence of an operating agreement specifying the members' intentions about what should happen upon their death, the surviving members and the deceased member's heirs must rely primarily on the default rules under state law. Although an operating agreement could be silent on the matter, for optimal control and intentionality, the members should make these decisions in advance and carefully document them in their LLC operating agreement, as well as their personal estate planning documents. In addition, it is crucial to ensure that there are no conflicting provisions in these documents that could create ambiguity about a member's wishes.

Some operating agreements incorporate provisions for transferring assets upon specific triggering events, including a member's death. These provisions are often called buy-sell provisions. Buy-sell provisions, along with other provisions in the operating agreement, may treat LLC membership interests as bifurcated into management interests and financial interests. It is not uncommon for LLC members to structure their rights in unique ways regarding how management authority is shared and how profits and losses are split. Moreover, in some cases, an operating agreement can restrict the type of ownership interest that an heir receives at the time of a member's death to one of these two categories rather than transferring complete financial and management rights. Alternatively, a buy-sell provision may give the surviving members the option to purchase the deceased member's interest at a fair price.

State Law

When an operating agreement is not in place or fails to address business succession matters, the survivors of a deceased LLC member must look to the default state laws. Under such circumstances, these default rules will be used to determine how the LLC and membership interests are treated. For example, the laws in some jurisdictions (including Minnesota) state that the LLC must be dissolved upon the death of the last member. The dissolution process requires liquidation of the LLC. The assets and profits that remain after debts are paid are incorporated into the deceased LLC member's interest and distributed among the LLC member's heirs. In other jurisdictions, state law specifies that an LLC member's interest cannot be transferred without the approval of all of the other members. These state variations in the law highlight how critical it is for LLC members to understand their unique jurisdictional

Protect Your Loved Ones with Life Insurance

September was National Life Insurance Awareness Month, prompting Americans to assess their life insurance needs. Many individuals recognize the importance of life insurance but far too many lack adequate coverage. Your coverage depends on several factors but as a general rule of thumb, as you take on more responsibilities and your family grows, your need for life insurance increases.

Below are several questions to ask yourself when determining the amount of life insurance you need:

- What immediate financial expenses (i.e. debt repayment, funeral expenses) would your family have?
- How much of your salary is devoted to current expenses and future needs?
- How long would your children need support if you were to die tomorrow?
- How much money would you want to leave for special situations upon your death, such as funding your children's education, inheritances to children and charitable gifts?
- What other assets or insurance policies do you have?

Determining whether to buy term or permanent life insurance also depends on your situation. People purchase life insurance for many reasons, most commonly to protect their families and small businesses, and to pay-off debt. Life insurance is not a one-time purchase. As your needs and family situation changes, so should your life insurance. It is a good idea to review your coverage annually to assure your family is protected.



Safe Harvest Tips from Ward & Oehler

- Maintain self-care and take breaks and get enough sleep
- Stay hydrated and do not skip meals
- Conduct regular maintenance checks on equipment
- Double-check machines are off
- Have an emergency plan
- Inform others of your location
- Have designated check in times and keep your phone on you
- Review that operators have proper training for new equipment
- Use proper safety equipment
- Double-check your fire extinguisher is up to date
- Check all shields, guards, tow ropes and chains
- Use a fail-safe when hoisting equipment
- Practice proper grain bin safety
- Check function of all lights and mirrors and be safe on the road

IT'S A BOY!

Attorney Jason Wagner welcomed his third child, Alfred James Wagner, into the world on September 9, 2020.

Congratulations Wagner Family!

In the Community

Our office sponsored the 2020 Elder Network Gala last month and is sponsoring the 2020 Legal Assistance of Olmsted County 5K & Online Auction October 10-17. Registration is now open if you are interested in supporting LAOC's mission and participating in the 5k run/walk and online auction.

Ward & Oehler is committed to serving the community.



Attorney Jason Wagner was selected to the 2020 Minnesota Rising Stars list! Only 2.5 percent of lawyers in the state are selected to receive this honor each year!

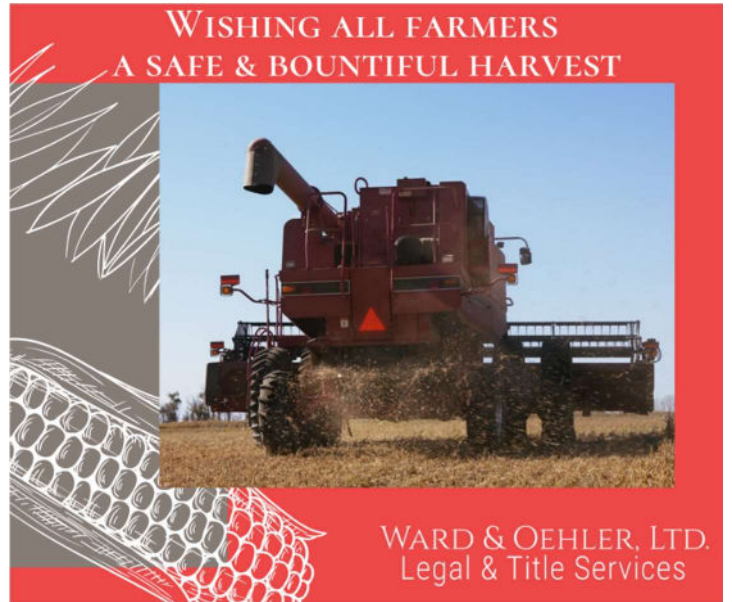
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Monday – Thursday 8:30 – 4:30
Friday 8:30 – 3:30

St. Charles: 819 Whitewater Ave
Tuesday 12:30 – 4:30
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By appointment

Red Wing: 419 Bush Street
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To schedule an appointment in either office, call (507) 288-5567. You can also book appointments online at www.wardoehler.com/book-online for appointments in Rochester.



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