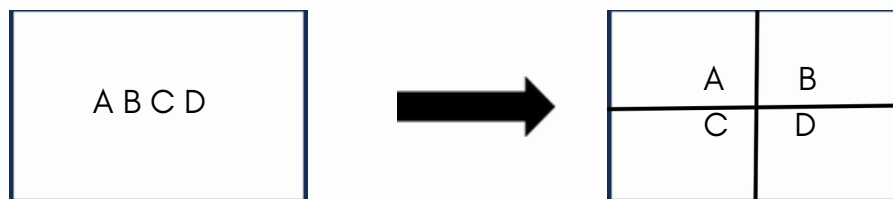


DID YOU KNOW?

PARTITION OF LAND UNDER CHAPTER 2 PART 9 OF THE NATIONAL LAND CODE (REVISED 2020) (ACT 828)

Partition occurs when the land held under a title by 2 or more persons as co-proprietors is divided so as to vest in each of them a portion of the land under a new and separate title.



A. Partition with consent from all co-proprietors (section 140)

- 2 or more co-proprietors holding undivided shares in land may, by agreement, apply jointly for partitioning the land in accordance with their respective share.
- if the land in question is subject to the category of “agriculture” or to any condition requiring its use for agriculture purpose and measures $\frac{2}{5}$ of a hectare or less than $\frac{2}{5}$ of a hectare, then, the co-proprietors may, in agreement between themselves, and with the approval of the State Authority, as provided by **section 143A**, partition the land.

B. Conditions for approval of partition (section 141)

Conditions, amongst others, include:

- the area to be vested in each of the co-proprietors is as nearly as may be proportionate to his undivided share in the whole; and
- compliance with certain conditions specified in **section 136** for approval of subdivision of land is required.

C. Application process (section 142)

- Application is to be made to the Land Administrator in Form 9B which includes the following:
 - (i) Prescribed fee payment;
 - (ii) Copies of the plan of intended partition;
 - (iii) The written consents from the co-proprietors who have agreed to join in the application for partition;
 - (iv) The written consent from any co-proprietor who has not joined in (ie who wishes to continue holding on the remaining land reflecting his share), provided that if the application is under **section 141A**, such consent is dispensed with; and
 - (v) Approval / consent from State Authority in the case where the land is situated in an area which is earmarked for development and the partition would not be contrary to any plan pertaining to such development or to any decision of any planning authority for that area.
- Effect of such application is:
 - (i) To vest in each of the co-proprietors who agrees to the partition, a separate title which will reflect an area proportionate to his undivided share in the whole land;
 - (ii) In the case of any 2 or more continuing as co-proprietors, then the remainder of the land will be vested in them under a separate title.
- Approval for the partition shall be given by the State Director (in the case of a land held under Registry title) or the Land Administrator (where the land is held under Land Office title), in the absence of any direction to the contrary by the State Authority.

D. Approval considerations

- The area to be vested in each of the co-proprietors seeking partition (ie individual titles) is as nearly as his / her undivided share in the whole land.
- The area to be vested in the remaining co-proprietors intending to continue as such, is nearly as may be to the total of their undivided shares.
- In the event that the land is subject to the category of agriculture and is 2/5 of a hectare or less, then the application shall be referred to the State Authority for approval (**section 142(5)**).

E. Partition without consent by the other co-proprietors (section 141A)

- Any co-proprietor, even a party holding a minor interest/share in the undivided land can apply for partition, if other co-proprietors do not consent.
- Similar application process as described in **section 142**.
- Upon receipt of an application under **section 141A**, the Land Administrator shall notify the other co-proprietors of the proposed partition (**section 142(3)**), requiring them to fully submit their grounds of objections, in writing, within 28 days from the date of service of the notice.
- Where written objection is received, an enquiry will be held and –
 - (a) if good grounds of objection exist, the Land Administrator shall reject the application or if the land is one which requires the approval of the State Director, then the Land Administrator shall recommend that the application be rejected; or
 - (b) in any other case, the Land Administrator may approve the application or (for Registry title) recommend to the State Director that the application be approved.

F. Power of Court to facilitate termination of co-proprietorship (section 145)

- where co-proprietors neither join in nor consent to the application for partition of land or the partition of the land is incapable of being approved by reason of **section 136(1)(f)** as applied by **section 141** or in a situation where Land Administrator refuses to exercise his authority under **section 141A**, the aggrieved co-proprietor can have recourse to Court under **section 145** to facilitate the termination of the co-proprietorship.
- refer to the Court of Appeal case of *Datin Sohaila binti Adom (Wakil Diri Bagi Adom bin Haji Ma'adil, Simati) V Einstein Tay (2016) MLJU 1650* and the High Court decision in *Ng Chai Huat V Ng Chai Khing (2023) MLJU 902* and *Chu Chai Yin & Anor V Lim Mee Wan (2024) MLJU 1244*.
- pursuant to **section 145(2)**, the Court may order:
 - (i) equitable payments between co-proprietors;
 - (ii) transfer of undivided share of any co-proprietor to the other co-proprietors; or
 - (iii) sale of the land.

Issued by: Kamala Mahlini and Zemilah bt Mohd Noor, Co-Chairpersons,
Bar Council Conveyancing Practice Committee



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