

## PARTITION

Supplemented:

§§13.14

13.21

13.27

### IV. Partition by Judicial Action

#### F. Trial

##### 2. (§13.14) Interests of Parties

In *Clark v. Dady*, 131 S.W.3d 382, 388 (Mo. App. W.D. 2004), the Court of Appeals for the Western District reiterated that it recognized the presumption that conveyances to two persons are presumed to convey equal shares in the absence of some other stated intent. This presumption may be rebutted by proof of disproportionate contributions toward the acquisition of the property without a family relationship between the owners or evidence of donative intent. *Id.* at 399. The court stated that unequal contributions toward "acquisition" include not only cash down payments but also any liability incurred in financing the balance of the purchase price.

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\*Mr. Riley's biographical information appears on page 13 1 of the original chapter.

Clark also recognized that the parties are entitled to reimbursement for certain qualifying expenditures made for taxes, insurance, repairs, or other improvements to the property, according to the standards set forth in *Hartog v. Siegler*, 615 S.W.2d 632, 636 (Mo. App. E.D. 1981). *Clark*, 131 S.W.3d at 390. When the property is partitioned in kind, the right to reimbursement is effectuated by placing an equitable lien on the property awarded to the other party. *Id.* Even if one party is awarded the entirety of the property, in kind, the court may place a lien on that property to allow for reimbursement to the other party for such expenditures. *Id.* at 391. But no reimbursement is permissible without sufficient evidence in the record of the elements necessary to substantiate a claim for reimbursement-e.g., the type of expenditure, the amount of the expenditure, and the increase to the value of the property as a result. *Id.*

#### I. Sale of Property

##### 3. (§13.21) Manner of Sale

While inadequacy of a sale price alone is an insufficient basis to refuse to confirm a sale, if the sale price is so inadequate as to raise a presumption of fraud or amount to a sacrifice, the sale may be set aside. *Sangamon Assocs., Ltd. v. The Carpenter 1985 Family P'ship, Ltd.*, 165 S.W.3d 141, 144-145 (Mo. banc 2005). A sale price of \$3.04 a square foot for property with a market value in excess of \$47 a square foot was so insufficient as to justify the trial court's refusal to confirm the sale. *Id.* at 145. If a sale is set aside, the proper procedure is to order another sale. *Id.* In *Sangamon*, the trial court erred by letting the high bidder increase its bid after the public sale closed because that amounted to holding a second, private sale. *Id.*

#### L. (§13.27) Partition of Personal Property

See *Clark v. Dady*, 131 S.W.3d 382, 388 (Mo. App. W.D. 2004).