

A brother and sister acquired title in fee simple to property, as equal tenants in common, by inheritance from their aunt. During the last 15 years of her lifetime, the aunt allowed the brother to occupy an apartment in the house on the property, to rent the other apartment in the house to various tenants, and to retain the rent. The brother made no payments to the aunt, and since the aunt's death 7 years ago he has made no payments to the sister. For those 22 years, the brother has paid the real estate taxes on the property, kept the building on the property insured, and maintained the building. At all times, the sister has lived in a distant city and has never had anything to do with the aunt, the brother, or the property.

Recently, the sister needed money for the operation of her business and demanded that the brother join her in selling the property. The brother refused.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years. There is no other applicable statute.

The sister brought an appropriate action against the brother for partition. The brother asserted all available defenses and counterclaims.

How should the court rule on the sister's action for partition?

- A. Deny the partition and find that title has vested in the brother by adverse possession.
- B. Deny the partition, confirm the tenancy in common, but require an accounting to determine if either the brother or sister is indebted to the other on account of the rental payment, taxes, insurance premiums, and maintenance costs.
- C. Grant the partition and require, as an adjustment, an accounting to determine if either the brother or sister is indebted to the other on account of the rental payments, taxes, insurance premiums, and maintenance costs.
- D. Grant the partition to the brother and sister as equal owners, but without an accounting.

## Explanation:

### Rights & duties of cotenants

- Rights** Possess & enjoy entire property  
Receive proportionate shares of net profits from removal of natural resources  
Receive pro rata shares of rent from third parties
- Duties** Pay proportionate shares of expenses that may give rise to lien (eg, mortgage, property tax)  
Contribute to repair or improvement costs, but only upon agreement

**Tenancy in common** is a type of concurrent estate in which each co-tenant has the right to possess and enjoy the entire property (ie, separate but undivided interests). A court *must* grant a co-tenant's request to **partition** (ie, divide) the co-tenancy (**Choice B**) and *may* require an **accounting** if one co-tenant appears to be indebted to the other. Indebtedness may occur if the co-tenants fail to **proportionally share** their **rights** (eg, receiving rental income) and **duties** (eg, paying property taxes, mortgage, agreed improvement costs).

Here, the brother and sister inherited a tenancy in common 7 years ago, when their aunt died. Since that time, the brother has kept the rental income from the property and paid all the property taxes, insurance costs, and maintenance fees. Because the income and expenses were never shared, one co-tenant is likely indebted to the other. Therefore, the court should require an accounting upon granting the sister's request for partition (**Choice D**).

**(Choice A)** To acquire title by [adverse possession](#), a person must have exclusive possession of the property. Exclusive possession of a tenancy in common is only achieved when one co-tenant commits ouster by preventing other co-tenants from accessing the property (eg, changing the locks). Here, though the sister never lived on the property, there is no evidence that the brother ever prevented her from accessing it. Therefore, he did not commit adverse possession.

### Educational objective:

Co-tenants in common must proportionately share their rights (eg, receiving rent) and duties (eg, paying property taxes, mortgage, agreed improvement costs). A court must grant a co-tenant's request to partition (ie, divide) the co-tenancy and may require an accounting when one co-tenant seems to be indebted to the other.

### References

Restatement (First) of Property § 65 (Am. Law Inst. 1936) (creation of tenancy in common).

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