



Substitute Senate Bill No. 900

Public Act No. 15-234

AN ACT CONCERNING THE ADOPTION OF THE UNIFORM PARTITION OF HEIRS' PROPERTY ACT AND ESTATES GIVEN IN FEE TAIL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2015*) Sections 1 to 13, inclusive, of this act may be cited as the Uniform Partition of Heirs' Property Act.

Sec. 2. (NEW) (*Effective October 1, 2015*) As used in this section and sections 3 to 13, inclusive, of this act:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual;

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant;

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual;

Substitute Senate Bill No. 900

(4) "Determination of value" means a court order (A) determining the fair market value of heirs' property under section 6 or 10 of this act, or (B) adopting the valuation of the property agreed to by all cotenants;

(5) "Heirs' property" means real property held in tenancy in common which satisfies all of the following requirements as of the date of filing a partition action:

(A) There is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) One or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following apply:

(i) Twenty per cent or more of the interests are held by cotenants who are relatives;

(ii) Twenty per cent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) Twenty per cent or more of the cotenants are relatives;

(6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by auction, sealed bids, or open-market sale conducted under section 10 of this act;

(7) "Partition in kind" means the division of heirs' property into physically distinct and separately titled parcels;

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

Substitute Senate Bill No. 900

(9) "Relative" means an ascendant, descendant or collateral or an individual otherwise related to another individual by blood, marriage, adoption or law of this state other than the provisions of sections 1 to 13, inclusive, of this act.

Sec. 3. (NEW) (*Effective October 1, 2015*) (a) The provisions of sections 1 to 13, inclusive, of this act apply to partition actions filed on or after October 1, 2015.

(b) In an action to partition real property under section 45a-326 of the general statutes, as amended by this act, or 52-495 of the general statutes, as applicable, the court shall determine whether the property is heirs' property. If the court determines that the property is heirs' property, the property shall be partitioned under sections 1 to 13, inclusive, of this act unless all of the cotenants otherwise agree in a record.

(c) The provisions of sections 1 to 13, inclusive, of this act supplement the provisions of chapter 919 of the general statutes, and, if an action is governed by sections 1 to 13, inclusive, of this act, replace provisions of chapter 919 of the general statutes that are inconsistent with the provisions of sections 1 to 13, inclusive, of this act.

Sec. 4. (NEW) (*Effective October 1, 2015*) (a) The provisions of sections 1 to 13, inclusive, of this act do not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs' property, the plaintiff, not later than ten days after the date of the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall state that the action has commenced and identify

Substitute Senate Bill No. 900

the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Sec. 5. (NEW) (*Effective October 1, 2015*) If the court appoints a committee pursuant to section 52-495 of the general statutes, each committee member shall be disinterested and impartial and not a party to or a participant in the action.

Sec. 6. (NEW) (*Effective October 1, 2015*) (a) Except as provided in subsections (b) and (c) of this section, if the court determines that the property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d) of this section.

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d) of this section, not later than ten days after the date on which the appraisal is filed with the court, the court shall send notice to each party with a known address, stating:

Substitute Senate Bill No. 900

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the court an objection to the appraisal not later than thirty days after the date on which the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d) of this section, the court shall conduct a hearing to determine the fair market value of the property not earlier than thirty days after the date on which a copy of the notice of the appraisal is sent to each party under subsection (e) of this section, whether or not an objection to the appraisal is filed under subdivision (3) of subsection (e) of this section. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f) of this section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Sec. 7. (NEW) (*Effective October 1, 2015*) (a) If any cotenant requested partition by sale, after the determination of value under section 6 of this act, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than forty-five days after the date on which the notice is sent under subsection (a) of this section, any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that

Substitute Senate Bill No. 900

requested partition by sale is the value of the entire parcel determined under section 6 of this act, multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the forty-five-day period prescribed in subsection (b) of this section, the following rules apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall (A) allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy; and (B) send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under subsections (a) and (b) of section 8 of this act.

(e) If the court sends notice to the parties under subdivision (1) or (2) of subsection (d) of this section, the court shall set a date, not earlier than sixty days after the date on which the notice was sent, by which electing cotenants must pay their apportioned price to the court. After the court sets such date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price to the court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to such amounts.

Substitute Senate Bill No. 900

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under subsections (a) and (b) of section 8 of this act, as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than twenty days after the date on which the court gives notice pursuant to subdivision (3) of subsection (e) of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price to the court. After the twenty-day period, the following rules apply:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall promptly issue an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to such amounts.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under subsections (a) and (b) of section 8 of this act, as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue an order reallocating all of the cotenants' interests, disburse the amounts held

Substitute Senate Bill No. 900

by it to the persons entitled to such amounts, and promptly refund any excess payment held by the court.

(g) Not later than forty-five days after the date on which the court sends notice to the parties pursuant to subsection (a) of this section, any cotenant entitled to buy an interest under this section may request that the court authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under subsection (g) of this section, the court, after hearing, may deny the request or authorize the requested additional sale on terms that the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) to (f), inclusive, of this section have been paid to the court and those interests have been reallocated among the cotenants as provided in subsections (a) to (f), inclusive, of this section; and

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under section 6 of this act.

Sec. 8. (NEW) (*Effective October 1, 2015*) (a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to section 7 of this act, or if after conclusion of the buyout under section 7 of this act, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in section 9 of this act, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

Substitute Senate Bill No. 900

(b) If the court does not order partition in kind under subsection (a) of this section, the court shall order partition by sale pursuant to section 10 of this act or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a) of this section, the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants who are unknown, cannot be located, or the subject of a default judgment, if their interests were not bought out pursuant to section 7 of this act, a part of the property representing the combined interests of such cotenants as determined by the court and this part of the property shall remain undivided.

Sec. 9. (NEW) (*Effective October 1, 2015*) (a) In determining under subsection (a) of section 8 of this act whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the heirs' property practicably can be divided among the cotenants;

(2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or

Substitute Senate Bill No. 900

predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) Any other relevant factor.

(b) The court may not consider any one factor in subsection (a) of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

Sec. 10. (NEW) (*Effective October 1, 2015*) (a) If the court orders a sale of heirs' property, the sale shall be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten days after the date of entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the real estate broker and establish a reasonable commission. If the parties do not agree on a real estate broker, the court shall appoint a disinterested real estate broker licensed in this

Substitute Senate Bill No. 900

state to offer the property for sale and shall establish a reasonable commission. The real estate broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the real estate broker appointed under subsection (b) of this section obtains, within a reasonable time, an offer to purchase the property for at least the determination of value: (1) The real estate broker shall comply with the reporting requirements in section 11 of this act; and (2) the sale may be completed in accordance with requirements of state law other than the requirements prescribed in sections 1 to 13, inclusive, of this act.

(d) If the real estate broker appointed under subsection (b) of this section does not obtain, within a reasonable time, an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) Approve the highest outstanding offer, if any;

(2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) Order that the property be sold by sealed bids or at auction.

(e) If the court orders a sale by sealed bids or at auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction shall be conducted in accordance with the provisions of chapter 919 of the general statutes.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Substitute Senate Bill No. 900

Sec. 11. (NEW) (*Effective October 1, 2015*) (a) A real estate broker appointed under subsection (b) of section 10 of this act to offer heirs' property for open-market sale shall file a report with the court not later than seven days after the date of receiving an offer to purchase the property for at least the value determined under section 6 or 10 of this act.

(b) The report required by subsection (a) of this section shall contain the following information:

- (1) A description of the property to be sold to each buyer;
- (2) The name of each buyer;
- (3) The proposed purchase price;
- (4) The terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) The amounts to be paid to lienholders;
- (6) A statement of contractual or other arrangements or conditions of the broker's commission; and
- (7) Other material facts relevant to the sale.

Sec. 12. (NEW) (*Effective October 1, 2015*) In applying and construing the provisions of sections 1 to 13, inclusive, of this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact such uniform provisions.

Sec. 13. (NEW) (*Effective October 1, 2015*) The provisions of sections 1 to 12, inclusive, of this act, modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act,

Substitute Senate Bill No. 900

15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC Section 7003(b).

Sec. 14. Subsection (a) of section 45a-326 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) During the settlement of the estate of any person who died owning an undivided interest in any property not specifically devised or bequeathed, the executor or administrator of the estate and the owner or owners of the major portion of the other interest therein may [apply] petition in writing to the [court of probate] Probate Court having jurisdiction of the estate to order partition of the same. Except as provided in sections 52-495 to 52-503, inclusive, and sections 1 to 13, inclusive, of this act, the court shall hear and decide the petition for partition in accordance with this section.

Sec. 15. Section 47-3 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

[Each estate, given in fee tail, shall be an absolute estate in fee simple to the issue of the first donee in tail.] Each estate given in fee tail shall be an absolute estate in fee simple to the named grantee.

Approved July 7, 2015