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LC004610

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IN GENERAL ASSEMBLY

RELATING TO PROPERTY -- UNIFORM PARTITION OF HEIRS' PROPERTY ACT

Referred To: Senate Judiciary

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

UNIFORM PARTITION OF HEIRS' PROPERTY ACT

6 This chapter shall be known and may be cited as the "Uniform Partition of Heirs' Property
7 Act."

9 For the purposes of this section, the following terms shall have the following meanings:

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

12 (2) “Collateral” means an individual who is related to another individual under the law of
13 intestate succession of the state, but who is not the other individual’s ascendant or descendant.

14 (3) “Descendant” means an individual who follows another individual in lineage, in the
15 direct line of descent from the other individual.

(4) “Determination of value” means a court order determining the fair market value of heirs' property pursuant to §§ 34-15.1-6 or 34-15.1-10 or adopting the valuation of the property agreed to by all cotenants.

19 (5) "Heirs' property" means real property held in tenancy in common which satisfies all of

1 the following requirements as of the filing of a partition action:

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

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

6 (iii) Any of the following applies:

7 (A) Twenty percent (20%) or more of the interests are held by cotenants who are relatives;

8 (B) Twenty percent (20%) or more of the interests are held by an individual who acquired
9 title from a relative, whether living or deceased; or

10 (C) Twenty percent (20%) or more of the cotenants are relatives.

11 (6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by
12 open market sale, sealed bids, or auction conducted under § 34-15.1-10.

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

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

17 (9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise
18 related to another individual by blood, marriage, adoption, or law of the state.

19 **34-15.1-3. Applicability -- Relation to other law.**

20 (a) This chapter shall apply to partition actions filed after January 1, 2027.

21 (b) In an action to partition real property under chapter 15 of title 34, the court shall
22 determine whether the property is heirs' property. If the court determines that the property is heirs'
23 property, the property shall be partitioned under this chapter unless all of the cotenants otherwise
24 agree in a record.

25 (c) This chapter supplements chapter 15 of title 34, and, if an action is governed by this
26 chapter, replaces provisions of said chapter 15 that are not inconsistent with this chapter.

27 **34-15.1-4. Service -- Notice by posting.**

28 (a) This chapter does not limit or affect the method by which service of a complaint in a
29 partition action may be made.

30 (b) If the plaintiff in a partition action seeks an order of notice by publication and the court
31 determines that the property may be heirs' property, the plaintiff, not later than ten (10) days after
32 the court's determination, shall post and maintain, while the action is pending, a conspicuous sign
33 on the property that is the subject of the action. The sign shall state that the action has commenced
34 and identify the name and address of the court and the common designation by which the property

1 is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and
2 the known defendants.

3 **34-15.1-5. Commissioners.**

4 If the court appoints commissioners under this chapter, each commissioner, in addition to
5 the requirements and disqualifications applicable to commissioners under this chapter, shall be
6 disinterested and impartial and not a party to or a participant in the action.

7 **34-15.1-6. Determination of value.**

8 (a) Except as otherwise provided in subsections (b) and (c) of this section, if the court
9 determines that the property that is the subject of an action to partition real property is heirs'
10 property, the court shall determine the fair market value of the property by ordering an appraisal.

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

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

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

20 (e) If an appraisal is conducted, the court shall, not later than ten (10) days after the
21 appraisal is filed, send notice to each party with a known address. The notice shall state all of the
22 following:

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

24 (2) A statement that the appraisal is available at the clerk's office; and

25 (3) A statement that a party may file with the court an objection to the appraisal not later
26 than thirty (30) days after the notice is sent, stating the grounds for the objection.

27 (f) If an appraisal is filed with the court under subsection (d) of this section, the court shall
28 conduct a hearing to determine the fair market value of the property not sooner than thirty (30) days
29 after a copy of the notice of the appraisal is sent to each party under subsection (e) of this section,
30 whether or not an objection to the appraisal is filed under subsection (e)(3) of this section. In
31 addition to the court-ordered appraisal, the court may consider any other evidence of fair market
32 value assuming sole ownership of the fee simple estate offered by a party.

33 (g) After a hearing under subsection (f) of this section, but before considering the merits of
34 the action to partition real property, the court shall determine the fair market value of the property

1 and send notice to the parties of the value.

2 **34-15.1-7. Cotenant buyout.**

3 (a) If a cotenant requests partition by sale, the court shall, after determining the value of
4 the property under § 34-15.1-6, send notice to the parties that any cotenant except a cotenant that
5 requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

6 (b) Not later than forty-five (45) days after the notice is sent under subsection (a) of this
7 section, a cotenant, except a cotenant that requested partition by sale, may give notice to the court
8 that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

9 (c) The purchase price for each of the interests of a cotenant that requested partition by sale
10 is the value of the entire parcel determined under § 34-15.1-6 multiplied by the cotenant's fractional
11 ownership of the entire parcel.

12 (d) After the expiration of the period in subsection (b) of this section, the following rules
13 shall apply:

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

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

21 (3) If no cotenant elects to buy all the interests of the cotenants that requested partition by
22 sale, the court shall send notice to all the parties of that fact and resolve the action to partition real
23 property under §§ 34-15.1-8(a) and (b).

24 (e) If the court sends notice to the parties under subsections (d)(1) or (d)(2) of this section,
25 the court shall set a date, not sooner than sixty (60) days after the date the notice was sent, by which
26 electing cotenants shall pay their apportioned price to the court. After this date, all of the following
27 rules shall apply:

28 (1) If all electing cotenants timely pay their apportioned price to the court, the court shall
29 issue an order reallocating all the interests of the cotenants and disburse the amounts held by the
30 court to the person entitled to them;

31 (2) If no cotenant timely pays the price apportioned to the cotenant, the court shall resolve
32 the action to partition real property under §§ 34-15.1-8(a) and (b) as if the interests of the cotenants
33 that requested partition by sale were not purchased; and

34 (3) If one or more but not all of the electing cotenants fail to pay the apportioned price on

1 time, the court, on motion, shall give notice to the electing cotenants that paid the apportioned price
2 of the interest remaining and the price for all the interest.

3 (f) Not later than twenty (20) days after the court gives notice under subsection (e)(3) of
4 this section, any cotenant that paid the price apportioned to the cotenant may elect to purchase all
5 of the remaining interest by paying the entire price for the remaining interest to the court. After the
6 twenty (20) day period, the following rules shall apply:

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

11 (2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the
12 action to partition real property under §§ 34-15.1-8(a) and (b) as if the interests of the cotenants
13 that requested partition by sale were not purchased; and

14 (3) If more than one cotenant pays the entire price for the remaining interest, the court shall
15 reapportion the remaining interest among the paying cotenants, based on each paying the cotenant's
16 original fractional ownership of the entire parcel divided by the total original fractional ownership
17 of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue
18 an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the
19 persons entitled to them, and promptly refund any excess payment held by the court.

20 (g) Not later than forty-five (45) days after the court sends notice to the parties, a cotenant
21 entitled to buy an interest under this section may request that the court authorize the sale as part of
22 the pending action of the interests of cotenants named as defendants and served with the complaint
23 but that did not appear in the action.

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

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

30 (2) The purchase price for the interest of a cotenant that did not appear is based on the
31 court's determination of value under § 34-15.1-6.

32 **34-15.1-8. Partition alternatives.**

33 (a) If all the interests of all cotenants that requested partition by sale are not purchased by
34 other cotenants under § 34-15.1-7, or, if after conclusion of the buyout under § 34-15.1-7, a cotenant

1 remains that has requested partition in kind, the court shall order partition in kind unless the court,
2 after consideration of the factors listed in §34-15.1-9, finds that partition in kind will result in great
3 prejudice to the cotenants as a group. In considering whether to order partition in kind, the court
4 shall approve a request by two (2) or more parties to have the requesting parties' individual interests
5 aggregated.

6 (b) If the court does not order partition in kind under subsection (a) of this section, the court
7 shall order partition by sale under § 34-15.1-10, or, if no cotenant requested partition by sale, the
8 court shall dismiss the action.

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

13 (d) If the court orders partition in kind, the court shall allocate to the cotenants who are
14 unknown, cannot be located, or are the subject of a default judgment, if the cotenant's interests
15 were not represented under § 34-15.1-7, a part of the property representing the combined interests
16 of these cotenants as determined by the court, and this part of the property shall remain undivided.

17 **34-15.1-9. Consideration for partition in kind.**

18 (a) In determining whether partition in kind would result in great prejudice to the cotenants
19 as a group under § 34-15.1-8, the court shall consider all of the following:

20 (1) Whether it is practicable to divide the heirs' property among the cotenants;

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

25 (3) Evidence of the collective duration of ownership or possession of the property by a
26 cotenant and one or more predecessors in title or predecessors in possession to the cotenant who
27 are or were relatives of the cotenant or each other;

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

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

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

1 (7) Any other relevant factor(s).

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

4 **34-15.1-10. Open market sale, sealed bids or auction.**

5 (a) If the court orders a sale of heirs' property, the sale shall be an open-market sale unless
6 the court finds that a sale by sealed bids or an auction would be more economically advantageous
7 and in the best interest of the cotenants as a group.

8 (b) If the court orders an open-market sale and the parties, not later than ten (10) days after
9 the entry of the order, agree on a real estate broker licensed in this state to offer the property for
10 sale, the court shall appoint the real estate broker and establish a reasonable commission. If the
11 parties do not agree on a real estate broker, the court shall appoint a disinterested real estate broker
12 licensed in this state to offer the property for sale and shall establish a reasonable commission. The
13 real estate broker shall offer the property for sale in a commercially reasonable manner at a price
14 no lower than the determination of value and on the terms and conditions established by the court.

15 (c) If the real estate broker appointed under subsection (b) of this section obtains, within a
16 reasonable time, an offer to purchase the property for not less than the determination of value, the
17 real estate broker shall comply with the reporting requirements in § 34-15.1-11 and the sale may
18 be completed in accordance with the requirements of state law other than this chapter.

19 (d) If the real estate broker appointed under subsection (b) of this section does not obtain,
20 within a reasonable time, an offer to purchase the property for not less than the determination of
21 value, the court, after a hearing, may do any of the following:

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

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

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

26 (e) If the court orders a sale by sealed bids or an auction, the court shall set the terms and
27 conditions of the sale.

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

30 **34-15.1-11. Report of open-market sale.**

31 (a) Unless required to do so within a shorter time, a real estate broker appointed under §
32 34-15.1-10(b) to offer heirs' property for open-market sale shall file a report with the court not later
33 than seven (7) days after receiving an offer to purchase the property for not less than the value
34 determined under § 34-15.1-6.

1 (b) The report required by subsection (a) of this section shall contain all of the following
2 information:
3 (1) A description of the property to be sold to each buyer;
4 (2) The name of each buyer;
5 (3) The proposed purchase price;
6 (4) The terms and conditions of the proposed sale, including the terms of any owner
7 financing;
8 (5) The amounts to be paid to lienholders;
9 (6) A statement of contractual or other arrangements or conditions of the broker's
10 commission; and
11 (7) Other material facts relevant to the sale.
12 **34-15.1-12. Uniformity of application and construction.**
13 In applying and construing this chapter, consideration shall be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact the uniform partition
15 of heirs' property act.
16 **34-15.1-13. Relation to electronic signatures in Global and National Commerce Act.**
17 This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and
18 National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede §
19 7001(c), or authorize electronic delivery of any of the notices described in § 7003(b).
20 SECTION 2. This act shall take effect on January 1, 2027.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- UNIFORM PARTITION OF HEIRS' PROPERTY ACT

1 This act would enact processes to partition heirs' property, which often refers to real
2 property that is owned by multiple relatives (co-tenants) who have inherited the property's title and
3 that does not have a written agreement on how to divide the property. Under the act, if a cotenant
4 sought to partition the property, the court would have to notify all other co-tenants and allow them
5 to buy out the interest of the co-tenant wishing to sell. The act would require the court to determine
6 the fair market value of the property and specify how to do so. Also, under certain conditions, such
7 as if a buyout did not occur, the court could require co-tenants to divide the property into physically
8 distinct and separately titled parcels. If the court ordered a sale of the property and the co-tenants
9 agreed, the court would have to hire a real estate broker for the sale of a property and require that
10 broker to file a report containing information on offers for the property.

11 This act would take effect on January 1, 2027.

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