State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 283

By: Senator T. Garner

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE PARTITION AND SALE OF LAND; TO REPEAL THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE PARTITION AND SALE OF LAND; AND TO REPEAL THE UNIFORM PARTITION OF HEIRS PROPERTY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 18-60-401 is amended to read as follows:

18-60-401. Petition ~~— Determination of heirs property — Applicability~~.

(a) Under this subchapter, any persons having any interest in and desiring a division of land held in joint tenancy, in common, as assigned or unassigned dower, as assigned or unassigned curtesy, or in coparceny, absolutely or subject to the life estate of another, or otherwise, or under an estate by the entirety when the owners have been divorced, except when the property involved is a homestead and occupied by either of the divorced persons, shall file in the circuit court a written petition.

(b)(1) The petition shall contain:

(A) The description of the property;

(B) The names of each party having an interest in the property and the nature and amount of the interest; and

(C) A prayer for:

(i) The division and for a sale of the property if it appears that partition cannot be made without great prejudice to the

owners; and

(ii) Any other appropriate relief.

(2) All persons interested in the property who have not united in the petition shall be summoned to appear.

~~(c)(1) The court shall determine whether or not the property is heirs property as defined in § 18-60-1002.~~

~~(2) If the court determines after notice and hearing or otherwise that the property is heirs property, the Uniform Partition of Heirs Property Act, § 18-60-1001 et seq., shall, unless all of the cotenants otherwise agree in a record as defined by § 18-60-1002:~~

~~(A) Apply to the partition of the property; and~~

~~(B) To the extent of any conflict between this subchapter and the Uniform Partition of Heirs Property Act, § 18-60-1001 et seq., govern the procedures and rights of the parties concerning the heirs property.~~

SECTION 2. Arkansas Code Title 18, Chapter 60, Subchapter 4, is amended to add an additional section to read as follows:

18-60-427. Restriction on right to partition.

(a) As used in this section, "stranger to the title" means a person who:

(1) Purchases an undivided interest in property; and

(2) Is not related in the fourth degree of consanguinity to another owner of the property.

(b)(1) If a stranger to the title purchases an undivided interest in a parcel of land containing at least ten (10) acres after July 1, 2019, he or she does not have a cause of action to partition the land until the expiration of three (3) years after the date of purchase.

(2) However, cotenants that individually or in a combination own fifty percent (50%) or more of the land may at any time institute a cause of action to partition the land.

SECTION 3. Arkansas Code Title 18, Chapter 60, Subchapter 10, is repealed.

~~Subchapter 10~~

~~— Uniform Partition of Heirs Property Act~~

~~18-60-1001. Short title.~~

~~This subchapter may be cited as the "Uniform Partition of Heirs Property Act".~~

~~18-60-1002. Definitions.~~

~~In this subchapter:~~

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

~~(B) "Ascendant" includes an adoptive parent and his or her ascendants.~~

~~(2) "Collateral" means an individual who is related to another individual under § 28-9-214 but who is not the other individual's ascendant or descendant.~~

~~(3)(A) "Descendant" means an individual's child, grandchild, and any other, however remotely related to such an individual, who is in a direct line of descent from him or her, including lineal descendants and excluding ascendants and collaterals.~~

~~(B) "Descendant" includes an adopted child and his or her descendants.~~

~~(4) "Determination of value" means a court order determining the fair market value of heirs property under § 18-60-1006 or § 18-60-1010 or 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 filing of 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 applies:~~

~~(i) 20 percent or more of the interests are held by cotenants who are relatives;~~

~~(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased;~~

~~or~~

~~(iii) 20 percent 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 § 18-60-1010.~~

~~(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.~~

~~(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by marriage or law of this state other than this subchapter.~~

~~18-60-1003. Applicability — Relation to other law.~~

~~(a) This subchapter applies to partition actions filed on or after January 1, 2016.~~

~~(b) In an action to partition real property under § 18-60-401 et seq., the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this subchapter unless all of the cotenants otherwise agree in a record.~~

~~(c) This subchapter supplements § 18-60-401 et seq. and, if an action is governed by this subchapter, replaces provisions of § 18-60-401 et seq. that are inconsistent with this subchapter.~~

~~18-60-1004. Service — Notice by posting.~~

~~(a) This subchapter does 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 notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after 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 must state that the action has commenced and identify 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.~~

~~18-60-1005. Commissioners.~~

~~If the court appoints commissioners pursuant to § 18-60-401 et seq., each commissioner, in addition to the requirements and disqualifications applicable to commissioners in § 18-60-401 et seq., must be disinterested and impartial and not a party to or a participant in the action.~~

~~18-60-1006. Determination of value.~~

~~(a) Except as otherwise provided in subsections (b) and (c), 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).~~

~~(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 registered 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), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:~~

~~(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 30 days after the notice is sent, stating the grounds for the objection.~~

~~(f)(1) Except as provided in subsection (h) of this section, 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 sooner than thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection (e) of this section.~~

~~(2) 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), 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.~~

~~(h) The court may waive the hearing required under subsection (f) of this section if no defendant or cotenant enters a court appearance or files an objection to the appraisal.~~

~~18-60-1007. Cotenant buyout.~~

~~(a) If any cotenant requested partition by sale, after the determination of value under § 18-60-1006, 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 45 days after the notice is sent under subsection (a), 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 requested partition by sale is the value of the entire parcel determined under § 18-60-1006 multiplied by the cotenant's fractional ownership of the entire parcel.~~

~~(d) After expiration of the period in subsection (b), 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 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 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 § 18-60-1008(a) and (b).~~

~~(e) If the court sends notice to the parties under subdivision (d)(1) or (2), the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:~~

~~(1) If all electing cotenants timely pay their apportioned price into 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 them.~~

~~(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under § 18-60-1008(a) and (b) 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 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 20 days after the court gives notice pursuant to subdivision (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-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 issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.~~

~~(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under § 18-60-1008(a) and (b) 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 issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.~~

~~(g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may request the court to 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), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as 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) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and~~

~~(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under § 18-60-1006.~~

~~18-60-1008. Partition alternatives.~~

~~(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to § 18-60-1007, or if after conclusion of the buyout under § 18-60-1007, 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 § 18-60-1009, finds that partition in kind will result in great 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.~~

~~(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to § 18-60-1010 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), 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 that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to § 18-60-1007, a part of the property representing the combined interests of these cotenants as determined by the court and this part of the property shall remain undivided.~~

~~18-60-1009. Considerations for partition in kind.~~

~~(a) In determining under § 18-60-1008(a) whether partition in kind would result in great 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 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) to be dispositive without weighing the totality of all relevant factors and circumstances.~~

~~18-60-1010. Open-market sale, sealed bids, or auction.~~

~~(a) If the court orders a sale of heirs property, the sale must 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 10 days after the 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 broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The 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 broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:~~

~~(1) the broker shall comply with the reporting requirements in § 18-60-1011; and~~

~~(2) the sale may be completed in accordance with state law other than this subchapter.~~

~~(d) If the broker appointed under subsection (b) 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 an auction.~~

~~(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under § 18-60-401 et seq.~~

~~(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.~~

~~18-60-1011. Report of open-market sale.~~

~~(a) Unless required to do so within a shorter time by § 18-60-401 et seq., a broker appointed under § 18-60-1010(b) to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under § 18-60-1006 or § 18-60-1010.~~

~~(b) The report required by subsection (a) must 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.~~

~~18-60-1012. Uniformity of application and construction.~~

~~In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.~~

~~18-60-1013. Relation to Electronic Signatures in Global and National Commerce Act.~~

~~This subchapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the~~

~~notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).~~

~~18-60-1014. Effective date.~~

~~This subchapter takes effect January 1, 2016.~~