STATE OF NEW YORK

7058--A

2019-2020 Regular Sessions

IN ASSEMBLY

April 4, 2019

Introduced by M. of A. DINOWITZ, WRIGHT -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, in relation to establishing the uniform partition of heirs property act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property actions and proceedings law is amended by adding a new section 993 to read as follows:

§ 993. Uniform partition of heirs property act. 1. Short title. This section shall be known as the "uniform partition of heirs property act".

2. Definitions. For purposes of this section, the following terms shall have the following meanings:

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

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

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

(d) "Determination of value" means a court order determining the fair market value of heirs property under subdivision six or ten of this section or adopting the valuation of the property agreed to by all co-tenants.

(e) "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:

(i) there is no agreement in a record binding all of the co-tenants which governs the partition of the property;

(ii) any of the co-tenants acquired title from a relative, whether living or deceased; and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(iii) any of the following applies:

(A) twenty percent or more of the interests are held by co-tenants who are relatives;

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

(C) twenty percent or more of the co-tenants are relatives of each other; or

(D) any co-tenant who acquired title from a relative resides in the property.

(f) "Partition by sale" means a court-ordered sale of the entire heirs property, or the portion thereof in which any co-tenant who acquired title from a relative resides, whether by auction, sealed bids, or open-market sale conducted under subdivision ten of this section.

(g) "Partition in kind" means partition or division of heirs property into physically distinct and separately titled parcels.

(h) "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.

(i) "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 under this section.

3. Applicability; relation to other law. (a) This section applies to partition actions filed on or after the effective date of this section.

(b) In any action to partition real property, the court shall determine, after notice and the right to be heard afforded to each party, whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned in accordance with this section unless all of the co-tenants otherwise agree in a record.

(c) This section shall supplement the general partition statute of this article and, if an action is governed by this section, shall replace the provisions of such general partition statute that are inconsistent with this section.

4. Service; notice by posting. (a) This section shall 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 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 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.

5. Settlement conference. (a) In any partition action of heirs property, plaintiffs shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when a request for judicial intervention is filed, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties with respect to the subject property including, but not limited to, as set forth in this section.

(b) Upon the filing of a request for judicial intervention, the court shall promptly send a notice to parties advising them of the time and

place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending. Plaintiff shall post a copy of the settlement conference notice in a conspicuous place on the property within twenty days of the date of the notice.

(c) The settlement conference may be adjourned or reconvened from time to time as appropriate during the pendency of the partition action. At any conference held pursuant to this section, the plaintiffs and the defendants shall appear in person or by counsel, and each party's representative at the conference shall be fully authorized to dispose of the entirety or any portion of the case. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant.

(d) At the first settlement conference held pursuant to this section, if the defendant has not filed an answer or made a pre-answer motion to dismiss, the court shall (i) advise the defendant of the requirement to answer the complaint, (ii) explain what is required to answer a complaint in court, (iii) advise that the ability to contest the partition action and assert defenses may be lost if an answer is not interposed, (iv) set a deadline for any co-tenants requesting partition by sale, and (v) provide information about available resources for legal assistance. A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule three hundred twenty of the civil practice law and rules, shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived, within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.

(e) Both the plaintiffs and defendants shall negotiate in good faith to reach a mutually agreeable resolution including, but not limited to, a tenancy in common agreement, a co-tenant buyout and the allocation, mechanics and financing thereof as provided in subdivision seven of this section, a partition in kind as provided in subdivisions eight and nine of this section, an open market sale as provided in subdivision ten of this section, or any other agreement or loss mitigation that is fair and reasonable considering the totality of factors listed in paragraph (a) of subdivision nine of this section.

(f) If the parties do not reach a mutually agreeable resolution, the referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process shall make a report of findings of fact, conclusions of law and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to paragraph (e) of this subdivision. If the court determines a plaintiff has failed to negotiate in good faith, the partition action shall be dismissed.

(g) Any motions submitted by any party to the action may be held in abeyance while the settlement conference process is ongoing, except for motions concerning (i) a determination of the percentage interests, if any, owned by any alleged co-tenant if such interests are in dispute and (ii) compliance with this rule and its implementing rules including applications to extend in the interests of justice any deadlines fixed herein.

(h) In addition to any other qualifications otherwise required, each commissioner appointed under section nine hundred fifteen of this article and any officer appointed to conduct a sale shall be disinterested, impartial and not related to a party to or participant in the action.

6. Determination of value. (a) 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 heirs property for purposes of subdivision seven of this section as follows, utilizing paragraph (d) of this subdivision, unless it has determined that paragraph (b) or (c) of this subdivision apply.

(b) If all co-tenants have agreed to the value of the property or to another method of valuation, the court shall adopt such 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 of the value to the parties.

(d) If paragraph (b) or (c) of this subdivision do not apply, the court shall order an appraisal by a disinterested real estate appraiser licensed in this state to determine the fair market value of the property. Any determination of value under paragraph (c), (d), (f) or (g) of this subdivision shall assume 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) Not later than ten days after an appraisal is filed under paragraph (d) of this subdivision, the court shall send notice to each party with a known address, stating:

(i) the appraised fair market value of the property plus the allowed cost of the appraisal;

(ii) that the appraisal is available at the clerk's office; and

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

(f) If an appraisal is filed with the court pursuant to paragraph (d) of this subdivision, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under paragraph (e) of this subdivision, whether or not an objection to the appraisal is filed under subparagraph (iii) of paragraph (e) of this subdivision. 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 paragraph (f) of this subdivision, 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.

7. Co-tenant buyout. (a) Every co-tenant who requests or joins a request for partition of heirs property by sale has thereby agreed that his or her interest may be acquired in accordance herewith at the value determined under subdivision six of this section by the co-tenants who have not sought or joined in the request for partition by sale. Upon determination that the property is heirs property and prior to the determination of value under subdivision six of this section, the court shall send notice to all parties identifying the owners of interests that have sought partition by sale, the percentage interests such owners allege to hold and of the right of the remaining co-tenants to avert

partition by sale by exercising the right to purchase all of the interests of the co-tenants who requested partition by sale.

(b) Not later than forty-five days after the notice of the determination of value under subdivision six of this section is sent and by the date specified in such notice, any co-tenant, except a co-tenant that requested partition by sale, may give notice to the court of the total amount of percentage interests subject to purchase that he or she elects to buy; provided, however, the court shall make a determination of each co-tenant's percentage ownership interest in the property prior to sending notice of the determination of value if such interest is in dispute and shall consider all facts as determined by the court and presented by the parties, and all laws and rules that govern the transfer, succession and acquisition of title through probate, intestacy or otherwise.

(c) The purchase price for percentage interests shall be the value of the entire parcel determined under subdivision six of this section multiplied by the aggregate amount of the percentage interests subject to purchase.

(d) After expiration of the period in paragraph (b) of this subdivision, the following rules apply:

(i) If one or more co-tenants have elected in the aggregate to buy at least the total amount of percentage interests subject to purchase, the court shall notify all the parties of such fact.

(ii) If the electing co-tenants' offers equal or exceed the amount of percentage interests subject to purchase, the court shall allocate the right to buy those interests among the electing co-tenants based on each electing co-tenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all co-tenants electing to buy, reserving priority, first, to electing co-tenants who acquired the interest from a relative and reside in the property and, second, to all other electing co-tenants who acquired their interest from a relative, and send notice to all the parties of the foregoing and of the price to be paid by each electing co-tenant.

(iii) If co-tenants with the right to elect fail to elect to purchase the entirety of the interests of the co-tenants whose interests are subject to purchase, the court shall send notice to all the parties of such fact and resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section.

(e) If the court sends notice to the parties under subparagraph (i) or (ii) of paragraph (d) of this subdivision, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing co-tenants must pay their apportioned price into the court. After this date, the following rules apply:

(i) If all electing co-tenants timely pay his or her apportioned price to the court, the court shall issue an order reallocating all the interests of the co-tenants and disburse the amounts held by the court to the persons entitled to them.

(ii) If no electing co-tenant timely pays his or her apportioned price, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If one or more, but not all, of the electing co-tenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing co-tenants that paid their apportioned price of percentage of the unpurchased interests remaining and the price for all such interests.

(f) Not later than twenty days after the court gives notice pursuant to subparagraph (iii) of paragraph (e) of this subdivision, any co-tenant that paid his or her apportioned price 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 shall apply:

(i) If only one co-tenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to such co-tenant. The court shall issue promptly an order reallocating the interests of all of the co-tenants and disburse the amounts held by the court to the persons entitled to such amounts.

(ii) If no co-tenant pays the entire price for the remaining interest, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If more than one co-tenant pays the entire price for the remaining interest, the court shall reapportion those remaining interests among those paying co-tenants, based on each paying co-tenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all co-tenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the co-tenants' interests, disburse the amounts held by the court 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 court sends notice to the parties pursuant to paragraph (a) of this subdivision, any co-tenant entitled to buy an interest under this subdivision may request the court to authorize the sale as part of the pending action of the interests of co-tenants 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 paragraph (g) of this subdivision, the court, after a 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:

(i) a sale authorized under this subdivision may occur only after the purchase prices for all interests subject to sale under paragraphs (a), (b), (c), (d), (e) and (f) of this subdivision have been paid to the court and such interests have been reallocated among the co-tenants as provided in such paragraphs; and

(ii) the purchase price for the interest of a non-appearing co-tenant is based on the court's determination of value under subdivision six of this section.

8. Partition alternatives. (a) If all the interests of all co-tenants that requested partition by sale are not purchased by other co-tenants pursuant to subdivision seven of this section, or if after conclusion of the buyout under subdivision seven of this section, a co-tenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in subdivision nine of this section, finds that partition in kind will result in great manifest prejudice to the co-tenants 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 paragraph (a) of this subdivision, the court shall order partition by sale pursuant to subdivision ten of this section provided that, if no co-tenant timely requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to paragraph (a) of this subdivision, the court may require that one or more co-tenants pay one or more other co-tenants amounts so that the payments, taken together with the value of the in kind distributions to the co-tenants, 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 co-tenants that are unknown, cannot be located, or the subject of a default judgment, if the co-tenants interests were not bought out pursuant to subdivision seven of this section, a part of the property representing the combined interests of such co-tenants as determined by the court and such part of the property shall remain undivided.

9. Considerations for partition in kind. (a) In determining under subdivision eight of this section whether partition in kind would result in great manifest prejudice to the co-tenants as a group, the court shall consider the following:

(i) whether the heirs property practicably can be divided among the co-tenants;

(ii) 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 amount reasonably expected to be realized if the property were sold as a whole, taking into account the conditions under which a court-ordered sale likely would occur;

(iii) evidence of the collective duration of ownership or possession of the property by a co-tenant and one or more predecessors in title or predecessors in possession to the co-tenant who are or were relatives of the co-tenant or each other;

(iv) a co-tenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the co-tenant;

(v) the lawful use being made of the property by a resident or other co-tenant and the degree to which any such co-tenant would be harmed if the co-tenant could not continue the same use of the property;

(vi) the degree to which the co-tenants 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;

(vii) the price, terms and conditions of the acquisition of the co-tenant's interest in the property if such co-tenant is not a relative of the person from whom it acquired his or her interest; and

(viii) any other relevant factor.

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

10. Open-market sale, sealed bids, or auction. (a) If the court orders a sale of heirs property, notwithstanding section two hundred thirty-one of this chapter, such sale shall be an open-market sale under this subdivision 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 co-tenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten 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 disinter-

ested 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 paragraph (b) of this subdivision obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(i) the broker shall comply with the reporting requirements in subdivision eleven of this section; and

(ii) the sale may be completed in accordance with the laws of this state other than this section.

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

(i) order that the property continue to be offered for an additional time, by the same or a substitute broker, in accordance with paragraph (b) of this subdivision; or

(ii) if it determines that doing so would not be in the best interests of the parties, approve the highest outstanding offer.

(e) If after the court has appointed a substitute broker and there are no reasonable offers for the property, the court may order the property be sold by sealed bids or an auction and, the court shall set terms and conditions of the sale. If the court orders an auction, the auction shall be conducted in accordance with section two hundred thirty-one of this chapter.

(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 net proceeds.

11. Report of open-market sale. (a) Unless required to do so within a shorter time by this article, a broker appointed under paragraph (b) of subdivision ten of this section 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 subdivision six or ten of this section.

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

(i) a description of the property to be sold to each buyer;

(ii) the name of each buyer;

(iii) the proposed purchase price;

(iv) the terms and conditions of the proposed sale, including the terms of any owner financing;

(v) the amounts to be paid to lienholders;

(vi) a statement of contractual or other arrangements or conditions of the broker's commission; and

(vii) other material facts relevant to the sale.

§ 2. This act shall take effect immediately.