

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:

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

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

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

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

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

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

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

18 (e) "Heirs property" means real property held in tenancy in common
19 which satisfies all of the following requirements as of the filing of a
20 partition action:

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

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

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

LBD10955-03-9

1 (iii) any of the following applies:

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

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

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

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

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

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

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

19 (i) "Relative" means an ascendant, descendant, or collateral or an
20 individual otherwise related to another individual by blood, marriage,
21 adoption, or law of this state other than under this section.

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

24 (b) In any action to partition real property, the court shall deter-
25 mine, after notice and the right to be heard afforded to each party,
26 whether the property is heirs property. If the court determines that the
27 property is heirs property, the property shall be partitioned in accord-
28 ance with this section unless all of the co-tenants otherwise agree in a
29 record.

30 (c) This section shall supplement the general partition statute of
31 this article and, if an action is governed by this section, shall
32 replace the provisions of such general partition statute that are incon-
33 sistent with this section.

34 4. Service; notice by posting. (a) This section shall not limit or
35 affect the method by which service of a complaint in a partition action
36 may be made.

37 (b) If the plaintiff in a partition action seeks an order of notice by
38 publication and the court determines that the property may be heirs
39 property, the plaintiff, not later than ten days after the court's
40 determination, shall post and maintain while the action is pending a
41 conspicuous sign on the property that is the subject of the action. The
42 sign shall state that the action has commenced and identify the name and
43 address of the court and the common designation by which the property is
44 known. The court may require the plaintiff to publish on the sign the
45 name of the plaintiff and the known defendants.

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

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

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

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

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

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

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

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

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

5 6. Determination of value. (a) If the court determines that the prop-
6 erty that is the subject of a partition action is heirs property, the
7 court shall determine the fair market value of the heirs property for
8 purposes of subdivision seven of this section as follows, utilizing
9 paragraph (d) of this subdivision, unless it has determined that para-
10 graph (b) or (c) of this subdivision apply.

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

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

18 (d) If paragraph (b) or (c) of this subdivision do not apply, the
19 court shall order an appraisal by a disinterested real estate appraiser
20 licensed in this state to determine the fair market value of the proper-
21 ty. Any determination of value under paragraph (c), (d), (f) or (g) of
22 this subdivision shall assume sole ownership of the fee simple estate.
23 On completion of the appraisal, the appraiser shall file a sworn or
24 verified appraisal with the court.

25 (e) Not later than ten days after an appraisal is filed under para-
26 graph (d) of this subdivision, the court shall send notice to each party
27 with a known address, stating:

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

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

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

34 (f) If an appraisal is filed with the court pursuant to paragraph (d)
35 of this subdivision, the court shall conduct a hearing to determine the
36 fair market value of the property not sooner than thirty days after a
37 copy of the notice of the appraisal is sent to each party under para-
38 graph (e) of this subdivision, whether or not an objection to the
39 appraisal is filed under subparagraph (iii) of paragraph (e) of this
40 subdivision. In addition to the court-ordered appraisal, the court may
41 consider any other evidence of value offered by a party.

42 (g) After a hearing under paragraph (f) of this subdivision, but
43 before considering the merits of the partition action, the court shall
44 determine the fair market value of the property and send notice to the
45 parties of the value.

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

1 partition by sale by exercising the right to purchase all of the inter-
2 ests of the co-tenants who requested partition by sale.

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

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

18 (d) After expiration of the period in paragraph (b) of this subdivi-
19 sion, the following rules apply:

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

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

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

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

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

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

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

1 (f) Not later than twenty days after the court gives notice pursuant
2 to subparagraph (iii) of paragraph (e) of this subdivision, any co-ten-
3 ant that paid his or her apportioned price may elect to purchase all of
4 the remaining interest by paying the entire price to the court. After
5 the twenty day period, the following rules shall apply:

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

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

15 (iii) If more than one co-tenant pays the entire price for the remain-
16 ing interest, the court shall reapportion those remaining interests
17 among those paying co-tenants, based on each paying co-tenant's original
18 fractional ownership of the entire parcel divided by the total original
19 fractional ownership of all co-tenants that paid the entire price for
20 the remaining interest. The court shall issue promptly an order reallo-
21 cating all of the co-tenants' interests, disburse the amounts held by
22 the court to the persons entitled to such amounts, and promptly refund
23 any excess payment held by the court.

24 (g) Not later than forty-five days after the court sends notice to the
25 parties pursuant to paragraph (a) of this subdivision, any co-tenant
26 entitled to buy an interest under this subdivision may request the court
27 to authorize the sale as part of the pending action of the interests of
28 co-tenants named as defendants and served with the complaint but that
29 did not appear in the action.

30 (h) If the court receives a timely request under paragraph (g) of this
31 subdivision, the court, after a hearing, may deny the request or author-
32 ize the requested additional sale on such terms as the court determines
33 are fair and reasonable, subject to the following limitations:

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

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

42 8. Partition alternatives. (a) If all the interests of all co-tenants
43 that requested partition by sale are not purchased by other co-tenants
44 pursuant to subdivision seven of this section, or if after conclusion of
45 the buyout under subdivision seven of this section, a co-tenant remains
46 that has requested partition in kind, the court shall order partition in
47 kind unless the court, after consideration of the factors listed in
48 subdivision nine of this section, finds that partition in kind will
49 result in great manifest prejudice to the co-tenants as a group. In
50 considering whether to order partition in kind, the court shall approve
51 a request by two or more parties to have their individual interests
52 aggregated.

53 (b) If the court does not order partition in kind under paragraph (a)
54 of this subdivision, the court shall order partition by sale pursuant to
55 subdivision ten of this section provided that, if no co-tenant timely
56 requested partition by sale, the court shall dismiss the action.

1 (c) If the court orders partition in kind pursuant to paragraph (a) of
2 this subdivision, the court may require that one or more co-tenants pay
3 one or more other co-tenants amounts so that the payments, taken togeth-
4 er with the value of the in kind distributions to the co-tenants, will
5 make the partition in kind just and proportionate in value to the frac-
6 tional interests held.

7 (d) If the court orders partition in kind, the court shall allocate to
8 the co-tenants that are unknown, cannot be located, or the subject of a
9 default judgment, if the co-tenants interests were not bought out pursu-
10 ant to subdivision seven of this section, a part of the property repres-
11 enting the combined interests of such co-tenants as determined by the
12 court and such part of the property shall remain undivided.

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

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

19 (ii) whether partition in kind would apportion the property in such a
20 way that the aggregate fair market value of the parcels resulting from
21 the division would be materially less than the amount reasonably
22 expected to be realized if the property were sold as a whole, taking
23 into account the conditions under which a court-ordered sale likely
24 would occur;

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

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

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

35 (vi) the degree to which the co-tenants have contributed their pro
36 rata share of the property taxes, insurance, and other expenses associ-
37 ated with maintaining ownership of the property or have contributed to
38 the physical improvement, maintenance, or upkeep of the property;

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

42 (viii) any other relevant factor.

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

46 10. Open-market sale, sealed bids, or auction. (a) If the court orders
47 a sale of heirs property, notwithstanding section two hundred thirty-one
48 of this chapter, such sale shall be an open-market sale under this
49 subdivision unless the court finds that a sale by sealed bids or an
50 auction would be more economically advantageous and in the best interest
51 of the co-tenants as a group.

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

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

6 (c) If the broker appointed under paragraph (b) of this subdivision
7 obtains within a reasonable time an offer to purchase the property for
8 at least the determination of value:

9 (i) the broker shall comply with the reporting requirements in subdi-
10 vision eleven of this section; and

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

13 (d) If the broker appointed under paragraph (b) of this subdivision
14 does not obtain within a reasonable time an offer to purchase the prop-
15 erty for at least the determination of value, the court, after a hear-
16 ing, may:

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

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

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

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

31 11. Report of open-market sale. (a) Unless required to do so within a
32 shorter time by this article, a broker appointed under paragraph (b) of
33 subdivision ten of this section to offer heirs property for open-market
34 sale shall file a report with the court not later than seven days after
35 receiving an offer to purchase the property for at least the value
36 determined under subdivision six or ten of this section.

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

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

40 (ii) the name of each buyer;

41 (iii) the proposed purchase price;

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

44 (v) the amounts to be paid to lienholders;

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

47 (vii) other material facts relevant to the sale.

48 § 2. This act shall take effect immediately.