

# STATE OF NEW YORK

7058

2019-2020 Regular Sessions

## IN ASSEMBLY

April 4, 2019

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

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) one or more of the co-tenants acquired title from a relative,  
24 whether living or deceased; and

25 (iii) any of the following applies:

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

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

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

3 (C) twenty percent or more of the co-tenants are relatives.

4 (f) "Partition by sale" means a court-ordered sale of the entire heirs  
5 property, whether by auction, sealed bids, or open-market sale conducted  
6 under subdivision ten of this section.

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

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

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

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

17 (b) In any action to partition real property under this article, the  
18 court shall determine whether the property is heirs property. If the  
19 court determines that the property is heirs property, the property shall  
20 be partitioned under this section unless all of the co-tenants otherwise  
21 agree in a record.

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

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

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

38 5. Commissioners. If the court designates commissioners pursuant to  
39 section nine hundred fifteen of this article, each commissioner, in  
40 addition to the requirements and disqualifications applicable to such  
41 commissioners in such section, shall be disinterested and impartial and  
42 not a party to or a participant in the action.

43 6. Determination of value. (a) Except as otherwise provided in para-  
44 graphs (b) and (c) of this subdivision, if the court determines that the  
45 property that is the subject of a partition action is heirs property,  
46 the court shall determine the fair market value of the property by  
47 ordering an appraisal pursuant to paragraph (d) of this subdivision.

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

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

55 (d) If the court orders an appraisal, the court shall appoint a disin-  
56 terested real estate appraiser licensed in this state to determine the

1 fair market value of the property assuming sole ownership of the fee  
2 simple estate. On completion of the appraisal, the appraiser shall file  
3 a sworn or verified appraisal with the court.

4 (e) If an appraisal is conducted pursuant to paragraph (d) of this  
5 subdivision, not later than ten days after the appraisal is filed, the  
6 court shall send notice to each party with a known address, stating:

7 (i) the appraised fair market value of the property;

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

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

12 (f) If an appraisal is filed with the court pursuant to paragraph (d)  
13 of this subdivision, the court shall conduct a hearing to determine the  
14 fair market value of the property not sooner than thirty days after a  
15 copy of the notice of the appraisal is sent to each party under para-  
16 graph (e) of this subdivision, whether or not an objection to the  
17 appraisal is filed under subparagraph (iii) of paragraph (e) of this  
18 subdivision. In addition to the court-ordered appraisal, the court may  
19 consider any other evidence of value offered by a party.

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

24 7. Co-tenant buyout. (a) If any co-tenant requested partition by sale,  
25 after the determination of value under subdivision six of this section,  
26 the court shall send notice to the parties that any co-tenant except a  
27 co-tenant that requested partition by sale may buy all the interests of  
28 the co-tenants that requested partition by sale.

29 (b) Not later than forty-five days after the notice is sent under  
30 paragraph (a) of this subdivision, any co-tenant, except a co-tenant  
31 that requested partition by sale, may give notice to the court that he  
32 or she elects to buy all the interests of the co-tenants that requested  
33 partition by sale.

34 (c) The purchase price for each of the interests of a co-tenant that  
35 requested partition by sale is the value of the entire parcel determined  
36 under subdivision six of this section multiplied by the co-tenant's  
37 fractional ownership of the entire parcel.

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

40 (i) If only one co-tenant elects to buy all the interests of the  
41 co-tenants that requested partition by sale, the court shall notify all  
42 the parties of such fact.

43 (ii) If more than one co-tenant elects to buy all the interests of the  
44 co-tenants that requested partition by sale, the court shall allocate  
45 the right to buy those interests among the electing co-tenants based on  
46 each electing co-tenant's existing fractional ownership of the entire  
47 parcel divided by the total existing fractional ownership of all co-ten-  
48 ants electing to buy and send notice to all the parties of such election  
49 and of the price to be paid by each electing co-tenant.

50 (iii) If no co-tenant elects to buy all the interests of the co-ten-  
51 ants that requested partition by sale, the court shall send notice to  
52 all the parties of such fact and resolve the partition action under  
53 paragraphs (a) and (b) of subdivision eight of this section.

54 (e) If the court sends notice to the parties under subparagraph (i) or  
55 (ii) of paragraph (d) of this subdivision, the court shall set a date,  
56 not sooner than sixty days after the date the notice was sent, by which

1 electing co-tenants must pay their apportioned price into the court.  
2 After this date, the following rules apply:

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

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

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

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

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

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

29 (iii) If more than one co-tenant pays the entire price for the remain-  
30 ing interest, the court shall reapportion the remaining interest among  
31 those paying co-tenants, based on each paying co-tenant's original frac-  
32 tionial ownership of the entire parcel divided by the total original  
33 fractional ownership of all co-tenants that paid the entire price for  
34 the remaining interest. The court shall issue promptly an order reallo-  
35 cating all of the co-tenants' interests, disburse the amounts held by  
36 the court to the persons entitled to such amounts, and promptly refund  
37 any excess payment held by the court.

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

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

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

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

1 8. Partition alternatives. (a) If all the interests of all co-tenants  
2 that requested partition by sale are not purchased by other co-tenants  
3 pursuant to subdivision seven of this section, or if after conclusion of  
4 the buyout under subdivision seven of this section, a co-tenant remains  
5 that has requested partition in kind, the court shall order partition in  
6 kind unless the court, after consideration of the factors listed in  
7 subdivision nine of this section, finds that partition in kind will  
8 result in great manifest prejudice to the co-tenants as a group. In  
9 considering whether to order partition in kind, the court shall approve  
10 a request by two or more parties to have their individual interests  
11 aggregated.

12 (b) If the court does not order partition in kind under paragraph (a)  
13 of this subdivision, the court shall order partition by sale pursuant to  
14 subdivision ten of this section or, if no co-tenant requested partition  
15 by sale, the court shall dismiss the action.

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

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

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

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

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

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

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

46 (v) the lawful use being made of the property by a co-tenant and the  
47 degree to which the co-tenant would be harmed if the co-tenant could not  
48 continue the same use of the property;

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

53 (vii) any other relevant factor.

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

1 10. Open-market sale, sealed bids, or auction. (a) If the court orders  
2 a sale of heirs property, the sale shall be an open-market sale unless  
3 the court finds that a sale by sealed bids or an auction would be more  
4 economically advantageous and in the best interest of the co-tenants as  
5 a group.

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

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

19 (i) the broker shall comply with the reporting requirements in subdivi-  
20 vision eleven of this section; and

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

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

27 (i) approve the highest outstanding offer, if any;

28 (ii) re-determine the value of the property and order that the proper-  
29 ty continue to be offered for an additional time; or

30 (iii) order that the property be sold by sealed bids or at an auction.

31 (e) If the court orders a sale by sealed bids or an auction, the court  
32 shall set terms and conditions of the sale. If the court orders an  
33 auction, the auction shall be conducted in accordance with section two  
34 hundred thirty-one of this chapter.

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

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

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

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

47 (ii) the name of each buyer;

48 (iii) the proposed purchase price;

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

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

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

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

55 § 2. This act shall take effect immediately.