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:

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

(iii) any of the following applies:

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

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

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

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

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

(g) "Partition in kind" means the 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 under this article, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under this section unless all of the co-tenants otherwise agree in a record.

(c) This section shall supplement the general partition statute 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. Commissioners. If the court designates commissioners pursuant to section nine hundred fifteen of this article, each commissioner, in addition to the requirements and disqualifications applicable to such commissioners in such section, shall be disinterested and impartial and not a party to or a participant in the action.

6. Determination of value. (a) Except as otherwise provided in paragraphs (b) and (c) of this subdivision, 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 paragraph (d) of this subdivision.

(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 the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed 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 paragraph (d) of this subdivision, not later than ten days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

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

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

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

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

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

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

(ii) If more than one co-tenant elects to buy all the interests of the co-tenants that requested partition by sale, 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 and send notice to all the parties of such election and of the price to be paid by each electing co-tenant.

(iii) If no co-tenant elects to buy all the interests of the co-tenants that requested partition by sale, 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 the interest remaining and the price for all such interest.

(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 the remaining interest 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 nonappearing 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 or, if no co-tenant 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 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;

(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 co-tenant and the degree to which the 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; and

(vii) 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, the sale shall 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 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 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 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) approve the highest outstanding offer, if any;

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

(iii) 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 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 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.