SENATE, No. 1869



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

“Uniform Partition of Heirs Property Act”; provides alternative process for handling partition actions filed in court concerning real property with multiple owners, at least one of whom had acquired title from relative.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning partition actions involving certain real property and supplementing chapter 56 of Title 2A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “Uniform Partition of Heirs Property Act.”

2. As used in this act:

“Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

“Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual’s ascendant or descendant.

“Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

“Determination of value” means a court order determining the fair market value of heirs property under section 6 or 10 of this act or adopting the valuation of the property agreed to by all cotenants.

“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: (1) there is no agreement in a record binding all the cotenants which governs the partition of the property; (2) one or more of the cotenants acquired title from a relative, whether living or deceased; and (3) any of the following applies: (a) 20 percent or more of the interests are held by cotenants who are relatives; (b) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (c) 20 percent or more of the cotenants are relatives.

“Partition by sale” means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under section 10 of this act.

“Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.

“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.

“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 this act.

3. a. In an action to partition real property under N.J.S.2A:56-1 et seq., based on information contained in the complaint, or upon motion of a party to the action or the court’s own motion, 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 the particular partition process set forth in this act unless all of the cotenants otherwise agree in a record.

b. This act is a supplement to N.J.S.2A:56-1 et seq. and if a partition action is governed by this act, it replaces the provisions of N.J.S.2A:56-1 et seq. that are inconsistent with this act.

4. 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 10 days after the court’s determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall state that a partition 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. If the court appoints a commissioner or commissioners pursuant to N.J.S.2A:56-1 et seq., each commissioner, in addition to the requirements set forth in N.J.S.2A:56-1 et seq. or court order making the one or more appointments, shall be disinterested, impartial, and not a party to or a participant in the partition action.

6. a. (1) Except as otherwise provided in subsections b. and c. of this section, if the court determines that the property involved in a partition action is heirs property, then a determination of the property’s fair market value, assuming sole ownership of the fee simple estate, shall be made by a disinterested real estate appraiser licensed in this State. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(2) After an appraisal is conducted and filed, the court shall send notice to each party as required by the practice of the court, which includes: the appraised fair market value of the property; information concerning an opportunity to review the appraisal on file with the court; and information for filing an objection to the appraisal, stating grounds for the objection, within a timeframe established by the court.

(3) Following notice to each party, the court shall conduct an appraisal hearing to determine the fair market value of the property, whether or not any objection to the appraisal is filed. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party. The final determination of the property’s fair market value shall be noticed to each party prior to proceeding further on the merits of a partition action.

b. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

c. If all cotenants have agreed to the value of the property or to another method of valuation, the court may accept that value or the value produced by the agreed method of valuation.

7. a. If any cotenant requests partition by sale, after the determination of value under section 6 of this act, the party filing the partition action shall send notice to the parties that any cotenant, except a cotenant that requested partition by sale, may buy all of the interests of the cotenants that requested partition by sale.

b. Not later than a date set by the court after the notice is sent under subsection a. of this section, any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all of the interests of the cotenants that requested partition by sale.

c. The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section 6 of this act multiplied by the cotenant’s fractional ownership of the entire parcel.

d. After expiration of the buyout notice period set by the court in subsection b. of this section, the following shall apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court, by order, shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant’s existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy, and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action, by order, in accordance with subsections a. and b. of section 8 of this act.

e. If the court sends notice to the parties under paragraph (1) or (2) of subsection d. of this section, the court shall set a subsequent date by which electing cotenants shall be required to pay their apportioned price into the court. After this date, the following shall apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action, by order, under subsections a. and b. of section 8 of this act as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all the interests.

f. On a date determined by the court following the notice provided by the court pursuant to paragraph (3) of subsection e. of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After this date, the following shall apply:

(1) If only one cotenant pays the entire price for the remaining interests, the court shall issue an order reallocating the remaining interest to that cotenant and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interests, the court shall resolve the partition action under subsection a. and b. of section 8 of this act as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interests, the court shall reapportion the remaining interests among those paying cotenants, based on each paying cotenant’s original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interests. The court shall issue an order reallocating all of the cotenants’ interests, disburse the amounts held by it to the persons entitled to them, and refund any excess payment held by the court.

g. Not later than a date determined by the court after notices have been sent to the parties pursuant to subsection a. of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

h. If the court receives a timely request under subsection g. of this section, the court, after hearing, may deny the request or authorize the requested additional sale on terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections a. through f. of this section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) The purchase price for the interest of a non-appearing cotenant is based on the court’s determination of value under section 6 of this act.

8. a. If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to section 7 of this act, or if after conclusion of the buyout period under that section, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in section 9 of this act, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

b. If the court does not order partition in kind under subsection a. of this section, the court shall order partition by sale pursuant to section 10 of this act or, if no cotenant requested partition by sale, the court shall dismiss the action.

c. If the court orders partition in kind pursuant to subsection a. of this section, the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, make the partition in kind just and proportionate in value to the fractional interests held.

d. If the court orders partition in kind pursuant to subsection a. of this section, the court shall allocate to the cotenants that are unknown, un-locatable, or the subject of a default judgment, if their interests were not bought out pursuant to section 7 of this act, a part of the property representing the combined interests of these cotenants as determined by the court.

9. a. In determining under subsection a. of section 8 of this act whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the heirs property practicably can be divided among the cotenants;

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

(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) A cotenant’s sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor as determined by the court.

b. The court may not consider any one factor in subsection a. of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

10. 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 cotenants as a group.

b. If the court orders an open-market sale and the parties, not later than a date set by the court 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 its determination of value pursuant to section 6 of this act and on the terms and conditions established by the court.

c. If the broker appointed under subsection b. of this section obtains, within a reasonable time, an offer to purchase the property for at least the determination of value:

(1) The broker shall comply with the reporting requirements in section 11 of this act; and

(2) The sale may be completed in accordance with State law other than this act.

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

(1) Approve the highest outstanding offer, if any;

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

(3) Order that the property be sold by sealed bids or at an auction.

e. If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale.

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. a. Unless otherwise required to do so within a shorter time, a broker appointed under subsection b. of section 10 of this act to offer heirs property by 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 section 6 or 10 of this act.

b. The report required by subsection a. of this section shall contain the following information:

(1) A description of the property to be sold to each buyer;

(2) The name of each buyer;

(3) The proposed purchase price;

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

(5) The amounts to be paid to lienholders;

(6) A statement of contractual or other arrangements or conditions of the broker’s commission; and

(7) Any other material facts relevant to the sale.

12. This act modifies, limits, and supersedes the federal “Electronic Signatures in Global and National Commerce Act,” 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

13. This act shall take effect immediately, and apply to any partition actions filed on or after that date.

STATEMENT

This bill, titled the “Uniform Partition of Heirs Property Act,” would provide an alternative process for handling partition actions filed in court concerning real property with multiple owners, at least one of whom had acquired title to the property from a relative. The bill is based on the 2010 uniform act of the same name drafted and approved by the Uniform Law Commission (formerly known as the National Conference of Commissioners on Uniform State Laws).

Any real property held by multiple owners as tenants in common (cotenants) may be subject to a partition action filed in Superior Court, which may result in (1) a partition in kind, the physical division of the property proportionate to individual owners’ interests, or (2) partition by sale, for which individual owners are then compensated out of the total purchase price proportionate to their interests. See N.J.S.2A:56-1 et seq. This bill would add new requirements to the partition process intended to more greatly protect the interests of cotenant property owners who may object to another owner’s action seeking to partition any property which meets the following characteristics and is referred to in the bill as “heirs property”:

- there is no agreement in a record binding all the cotenants which governs the partition of the property;

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

- any one of the following applies: 20 percent or more of the interests are held by cotenants who are relatives; 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or 20 percent or more of the cotenants are relatives.

When a partition action is filed pursuant to the partition law, N.J.S.2A:56-1 et seq., the court would make a determination, based on information contained in the partition complaint, or upon motion of a party to the action or the court’s own motion, whether the subject property is “heirs property.” If it is, the property would be partitioned in accordance with the process set forth in the bill.

The bill would require a disinterested real estate appraiser licensed in the State to make a determination of the property’s fair market value, assuming sole ownership of the fee simple estate, unless the evidentiary value of an appraisal would be outweighed by the appraisal’s cost (in which case the court would determine fair market value), or the cotenants agreed to the property’s value or to another valuation method. If conducted, the completed appraisal would be filed with the court.

If any cotenant requests a partition by sale, after the determination of the property’s value, a notice would be sent to all parties that any cotenant, except a cotenant that requested partition by sale, could buy all of the interests of the one or more cotenants requesting partition by sale. Any cotenant could then elect to buy all of those interests by giving notice to the court. The purchase price for each of the interests would be the value of the entire parcel of property multiplied by the cotenant’s fractional ownership of the entire parcel. The court would establish a date by which all cotenants electing to purchase interests would have to pay their apportioned price into the court, after which the property interests would be reallocated amongst the remaining cotenants and the money held by the court disbursed to the one or more cotenants who have been bought-out.

At the conclusion of the buyout period, if all of the interests of the one or more cotenants that requested partition by sale are not purchased by other cotenants, or any cotenant remains that requested a partition in kind, the court would order the partitioning of the property into physically distinct and separately titled parcels, unless the court found that such partitioning would result in great prejudice to the cotenants as a group; the determination of “great prejudice” would be based on such factors as whether the property could be divided practicably amongst cotenants, whether doing so could decrease the aggregate values of the resulting parcels versus selling the property as a whole, and any cotenant’s sentimental attachment to the property, including attachment arising because of any ancestral, unique, or special value to the cotenant. In such a case, the court would then order a partition by sale, unless no cotenant requested such action, resulting in the dismissal of the case and no further partitioning of the property.

Any partition by sale would be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group. Any open-market sale would proceed under a licensed real estate broker, either agreed to by the parties or, absent agreement, appointed by the court. The real estate broker would be provided a reasonable commission on the sale as determined by the court.

The broker would offer the property for sale in a commercially reasonable manner at a price no lower than the previously determined value of the property, and on the terms and conditions established by the court. The broker, after receiving an offer to purchase the property, would file a report with the court containing information about the purchase price, name of each buyer, terms of the proposed sale, including the terms of any financing, any amounts to be paid to lienholders, and other material facts relevant to the sale. Thereafter, the purchase could be completed in accordance with applicable State law and payments distributed based upon the former cotenants various interests in the property.