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4

A Bill

HOUSE BILL 1245

5 By: Representatives Shepherd, Sabin
6 By: Senators J. Hutchinson, Burnett, Elliott, S. Flowers, D. Johnson
7

For An Act To Be Entitled

9 AN ACT TO ENACT THE UNIFORM PARTITION OF HEIRS
10 PROPERTY ACT; TO MAKE RELATED TECHNICAL CORRECTIONS;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO ENACT THE UNIFORM PARTITION OF HEIRS
16 PROPERTY ACT; AND TO MAKE RELATED
17 TECHNICAL CORRECTIONS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 18, Chapter 60, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 10 – Uniform Partition of Heirs Property Act

25
26 18-60-1001. Short title.

27 This subchapter may be cited as the "Uniform Partition of Heirs
28 Property Act".
29

30 18-60-1002. Definitions.

31 In this subchapter:

32 (1)(A) "Ascendant" means an individual who precedes another
33 individual in lineage, in the direct line of ascent from the other
34 individual.

35 (B) "Ascendant" includes an adoptive parent and his or her
36 ascendants.



1 (2) "Collateral" means an individual who is related to another
2 individual under § 28-9-214 but who is not the other individual's ascendant
3 or descendant.

4 (3)(A) "Descendant" means an individual's child, grandchild, and
5 any other, however remotely related to such an individual, who is in a direct
6 line of descent from him or her, including lineal descendants and excluding
7 ascendants and collaterals.

8 (B) "Descendant" includes an adopted child and his or her
9 descendants.

10 (4) "Determination of value" means a court order determining the
11 fair market value of heirs property under § 18-60-1006 or § 18-60-1010 or
12 adopting the valuation of the property agreed to by all cotenants.

13 (5) "Heirs property" means real property held in tenancy in
14 common which satisfies all of the following requirements as of the filing of
15 a partition action:

16 (A) there is no agreement in a record binding all the
17 cotenants which governs the partition of the property;

18 (B) one or more of the cotenants acquired title from a
19 relative, whether living or deceased; and

20 (C) any of the following applies:

21 (i) 20 percent or more of the interests are held by
22 cotenants who are relatives;

23 (ii) 20 percent or more of the interests are held by
24 an individual who acquired title from a relative, whether living or deceased;
25 or

26 (iii) 20 percent or more of the cotenants are
27 relatives.

28 (6) "Partition by sale" means a court-ordered sale of the entire
29 heirs property, whether by auction, sealed bids, or open-market sale
30 conducted under § 18-60-1010.

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

33 (8) "Record" means information that is inscribed on a tangible
34 medium or that is stored in an electronic or other medium and is retrievable
35 in perceivable form.

36 (9) "Relative" means an ascendant, descendant, or collateral or

1 an individual otherwise related to another individual by marriage or law of
2 this state other than this subchapter.

3
4 18-60-1003. Applicability - Relation to other law.

5 (a) This subchapter applies to partition actions filed on or after
6 January 1, 2016.

7 (b) In an action to partition real property under § 18-60-401 et seq.,
8 the court shall determine whether the property is heirs property. If the
9 court determines that the property is heirs property, the property must be
10 partitioned under this subchapter unless all of the cotenants otherwise agree
11 in a record.

12 (c) This subchapter supplements § 18-60-401 et seq. and, if an action
13 is governed by this subchapter, replaces provisions of § 18-60-401 et seq.
14 that are inconsistent with this subchapter.

15
16 18-60-1004. Service - Notice by posting.

17 (a) This subchapter does not limit or affect the method by which
18 service of a complaint in a partition action may be made.

19 (b) If the plaintiff in a partition action seeks notice by publication
20 and the court determines that the property may be heirs property, the
21 plaintiff, not later than 10 days after the court's determination, shall post
22 and maintain while the action is pending a conspicuous sign on the property
23 that is the subject of the action. The sign must state that the action has
24 commenced and identify the name and address of the court and the common
25 designation by which the property is known. The court may require the
26 plaintiff to publish on the sign the name of the plaintiff and the known
27 defendants.

28
29 18-60-1005. Commissioners.

30 If the court appoints commissioners pursuant to § 18-60-401 et seq.,
31 each commissioner, in addition to the requirements and disqualifications
32 applicable to commissioners in § 18-60-401 et seq., must be disinterested and
33 impartial and not a party to or a participant in the action.

34
35 18-60-1006. Determination of value.

36 (a) Except as otherwise provided in subsections (b) and (c), if the

1 court determines that the property that is the subject of a partition action
2 is heirs property, the court shall determine the fair market value of the
3 property by ordering an appraisal pursuant to subsection (d).

4 (b) If all cotenants have agreed to the value of the property or to
5 another method of valuation, the court shall adopt that value or the value
6 produced by the agreed method of valuation.

7 (c) If the court determines that the evidentiary value of an appraisal
8 is outweighed by the cost of the appraisal, the court, after an evidentiary
9 hearing, shall determine the fair market value of the property and send
10 notice to the parties of the value.

11 (d) If the court orders an appraisal, the court shall appoint a
12 disinterested real estate appraiser registered in this state to determine the
13 fair market value of the property assuming sole ownership of the fee simple
14 estate. On completion of the appraisal, the appraiser shall file a sworn or
15 verified appraisal with the court.

16 (e) If an appraisal is conducted pursuant to subsection (d), not later
17 than 10 days after the appraisal is filed, the court shall send notice to
18 each party with a known address, stating:

19 (1) the appraised fair market value of the property;

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

21 (3) that a party may file with the court an objection to the
22 appraisal not later than 30 days after the notice is sent, stating the
23 grounds for the objection.

24 (f) If an appraisal is filed with the court pursuant to subsection
25 (d), the court shall conduct a hearing to determine the fair market value of
26 the property not sooner than 30 days after a copy of the notice of the
27 appraisal is sent to each party under subsection (e), whether or not an
28 objection to the appraisal is filed under subdivision (e)(3). In addition to
29 the court-ordered appraisal, the court may consider any other evidence of
30 value offered by a party.

31 (g) After a hearing under subsection (f), but before considering the
32 merits of the partition action, the court shall determine the fair market
33 value of the property and send notice to the parties of the value.

34
35 18-60-1007. Cotenant buyout.

36 (a) If any cotenant requested partition by sale, after the

1 determination of value under § 18-60-1006, the court shall send notice to the
2 parties that any cotenant except a cotenant that requested partition by sale
3 may buy all the interests of the cotenants that requested partition by sale.

4 (b) Not later than 45 days after the notice is sent under subsection
5 (a), any cotenant except a cotenant that requested partition by sale may give
6 notice to the court that it elects to buy all the interests of the cotenants
7 that requested partition by sale.

8 (c) The purchase price for each of the interests of a cotenant that
9 requested partition by sale is the value of the entire parcel determined
10 under § 18-60-1006 multiplied by the cotenant's fractional ownership of the
11 entire parcel.

12 (d) After expiration of the period in subsection (b), the following
13 rules apply:

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

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

24 (3) If no cotenant elects to buy all the interests of the
25 cotenants that requested partition by sale, the court shall send notice to
26 all the parties of that fact and resolve the partition action under § 18-60-
27 1008(a) and (b).

28 (e) If the court sends notice to the parties under subdivision (d)(1)
29 or (2), the court shall set a date, not sooner than 60 days after the date
30 the notice was sent, by which electing cotenants must pay their apportioned
31 price into the court. After this date, the following rules apply:

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

36 (2) If no electing cotenant timely pays its apportioned price,

1 the court shall resolve the partition action under § 18-60-1008(a) and (b) as
2 if the interests of the cotenants that requested partition by sale were not
3 purchased.

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

8 (f) Not later than 20 days after the court gives notice pursuant to
9 subdivision (e)(3), any cotenant that paid may elect to purchase all of the
10 remaining interest by paying the entire price into the court. After the 20-
11 day period, the following rules apply:

12 (1) If only one cotenant pays the entire price for the remaining
13 interest, the court shall issue an order reallocating the remaining interest
14 to that cotenant. The court shall issue promptly an order reallocating the
15 interests of all of the cotenants and disburse the amounts held by it to the
16 persons entitled to them.

17 (2) If no cotenant pays the entire price for the remaining
18 interest, the court shall resolve the partition action under § 18-60-1008(a)
19 and (b) as if the interests of the cotenants that requested partition by sale
20 were not purchased.

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

29 (g) Not later than 45 days after the court sends notice to the parties
30 pursuant to subsection (a), any cotenant entitled to buy an interest under
31 this section may request the court to authorize the sale as part of the
32 pending action of the interests of cotenants named as defendants and served
33 with the complaint but that did not appear in the action.

34 (h) If the court receives a timely request under subsection (g), the
35 court, after hearing, may deny the request or authorize the requested
36 additional sale on such terms as the court determines are fair and

1 reasonable, subject to the following limitations:

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

6 (2) the purchase price for the interest of a nonappearing
7 cotenant is based on the court's determination of value under § 18-60-1006.

8
9 18-60-1008. Partition alternatives.

10 (a) If all the interests of all cotenants that requested partition by
11 sale are not purchased by other cotenants pursuant to § 18-60-1007, or if
12 after conclusion of the buyout under § 18-60-1007, a cotenant remains that
13 has requested partition in kind, the court shall order partition in kind
14 unless the court, after consideration of the factors listed in § 18-60-1009,
15 finds that partition in kind will result in great prejudice to the cotenants
16 as a group. In considering whether to order partition in kind, the court
17 shall approve a request by two or more parties to have their individual
18 interests aggregated.

19 (b) If the court does not order partition in kind under subsection
20 (a), the court shall order partition by sale pursuant to § 18-60-1010 or, if
21 no cotenant requested partition by sale, the court shall dismiss the action.

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

27 (d) If the court orders partition in kind, the court shall allocate to
28 the cotenants that are unknown, unlocatable, or the subject of a default
29 judgment, if their interests were not bought out pursuant to § 18-60-1007, a
30 part of the property representing the combined interests of these cotenants
31 as determined by the court and this part of the property shall remain
32 undivided.

33
34 18-60-1009. Considerations for partition in kind.

35 (a) In determining under § 18-60-1008(a) whether partition in kind
36 would result in great prejudice to the cotenants as a group, the court shall

1 consider the following:

2 (1) whether the heirs property practicably can be divided among
3 the cotenants;

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

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

13 (4) a cotenant's sentimental attachment to the property,
14 including any attachment arising because the property has ancestral or other
15 unique or special value to the cotenant;

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

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

23 (7) any other relevant factor.

24 (b) The court may not consider any one factor in subsection (a) to be
25 dispositive without weighing the totality of all relevant factors and
26 circumstances.

27
28 18-60-1010. Open-market sale, sealed bids, or auction.

29 (a) If the court orders a sale of heirs property, the sale must be an
30 open-market sale unless the court finds that a sale by sealed bids or an
31 auction would be more economically advantageous and in the best interest of
32 the cotenants as a group.

33 (b) If the court orders an open-market sale and the parties, not later
34 than 10 days after the entry of the order, agree on a real estate broker
35 licensed in this state to offer the property for sale, the court shall
36 appoint the broker and establish a reasonable commission. If the parties do

1 not agree on a broker, the court shall appoint a disinterested real estate
2 broker licensed in this state to offer the property for sale and shall
3 establish a reasonable commission. The broker shall offer the property for
4 sale in a commercially reasonable manner at a price no lower than the
5 determination of value and on the terms and conditions established by the
6 court.

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

10 (1) the broker shall comply with the reporting requirements in
11 § 18-60-1011; and

12 (2) the sale may be completed in accordance with state law other
13 than this subchapter.

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

17 (1) approve the highest outstanding offer, if any;

18 (2) redetermine the value of the property and order that the
19 property continue to be offered for an additional time; or

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

22 (e) If the court orders a sale by sealed bids or an auction, the court
23 shall set terms and conditions of the sale. If the court orders an auction,
24 the auction must be conducted under § 18-60-401 et seq.

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

28
29 18-60-1011. Report of open-market sale.

30 (a) Unless required to do so within a shorter time by § 18-60-401 et
31 seq., a broker appointed under § 18-60-1010(b) to offer heirs property for
32 open-market sale shall file a report with the court not later than seven days
33 after receiving an offer to purchase the property for at least the value
34 determined under § 18-60-1006 or § 18-60-1010.

35 (b) The report required by subsection (a) must contain the following
36 information:

- 1 (1) a description of the property to be sold to each buyer;
- 2 (2) the name of each buyer;
- 3 (3) the proposed purchase price;
- 4 (4) the terms and conditions of the proposed sale, including the
 5 terms of any owner financing;
- 6 (5) the amounts to be paid to lienholders;
- 7 (6) a statement of contractual or other arrangements or
 8 conditions of the broker's commission; and
- 9 (7) other material facts relevant to the sale.

10
 11 18-60-1012. Uniformity of application and construction.

12 In applying and construing this uniform act, consideration must be
 13 given to the need to promote uniformity of the law with respect to its
 14 subject matter among states that enact it.

15
 16 18-60-1013. Relation to Electronic Signatures in Global and National
 17 Commerce Act.

18 This subchapter modifies, limits, and supersedes the Electronic
 19 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et
 20 seq., but does not modify, limit, or supersede Section 101(c) of that act, 15
 21 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
 22 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

23
 24 18-60-1014. Effective date.

25 This subchapter takes effect January 1, 2016.

26
 27 SECTION 2. Arkansas Code § 18-60-401 is amended to read as follows:

28 18-60-401. Petition – Determination of heirs property – Applicability.

29 (a) Under this ~~act~~ subchapter, any persons having any interest in, and
 30 desiring a division of, land held in joint tenancy, in common, as assigned or
 31 unassigned dower, as assigned or unassigned curtesy, or in coparceny,
 32 absolutely or subject to the life estate of another, or otherwise, or under
 33 an estate by the entirety when the owners ~~shall~~ have been divorced, except
 34 when the property involved ~~shall be~~ is a homestead and occupied by either of
 35 the divorced persons, shall file in the circuit court a written petition.

36 (b)(1) ~~This~~ The petition shall contain:

- 1 (A) ~~a~~ The description of the property;~~;~~
- 2 (B) ~~the~~ The names of ~~those~~ each party having an interest
- 3 in ~~it,~~ the property and the nature and amount of the interest ~~shall be~~
- 4 ~~briefly stated in ordinary language;~~ and
- 5 (C) ~~with a~~ A prayer for:
- 6 (i) ~~the~~ The division and for a sale ~~thereof~~ of the
- 7 property if it ~~shall appear~~ appears that partition cannot be made without
- 8 great prejudice to the owners; and
- 9 (ii) Any other appropriate relief.

10 (2) ~~Thereupon~~ all All persons interested in the property who

11 have not united in the petition shall be summoned to appear.

12 (c)(1) The court shall determine whether or not the property is heirs

13 property as defined in § 18-60-1002.

14 (2) If the court determines after notice and hearing or

15 otherwise that the property is heirs property, the Uniform Partition of Heirs

16 Property Act, § 18-60-1001 et seq., shall unless all of the cotenants

17 otherwise agree in a record as defined by § 18-60-1002:

- 18 (A) Apply to the partition of the property; and
- 19 (B) To the extent of any conflict between this subchapter
- 20 and the Uniform Partition of Heirs Property Act, § 18-60-1001 et seq., govern
- 21 the procedures and rights of the parties concerning the heirs property.

22

23 SECTION 3. Arkansas Code § 18-60-404 is repealed.

24 ~~18-60-404. Restriction on right to partition for certain purchasers of~~

25 ~~land.~~

26 ~~(a)(1) When an undivided interest in a parcel of land containing at~~

27 ~~least ten (10) acres is purchased after June 28, 1985, by a stranger to the~~

28 ~~title, the purchaser shall not have a cause of action to partition the land~~

29 ~~until the expiration of three (3) years after the date of purchase.~~

30 ~~(2) However, any person or group of persons or entities which~~

31 ~~individually or in combination own fifty percent (50%) or more of the parcel~~

32 ~~may at any time institute a cause of action to partition the land.~~

33 ~~(b) For purposes of this section, the term "stranger to the title"~~

34 ~~means a person who purchases an undivided interest in property and who is not~~

35 ~~related in the fourth degree of consanguinity to any other owner of such~~

36 ~~property.~~

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SECTION 4. EFFECTIVE DATE. This act is effective on and after January 1, 2016.