

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 58th Legislature (2022)

4   HOUSE BILL 3528

                                  By: Virgin

7                                   AS INTRODUCED

8           An Act relating to civil procedure; enacting the  
9           Oklahoma Farmland and Wealth Preservation Act;  
10          defining terms; providing applicability and relation  
11          to other law; providing service and notice  
12          requirements; providing requirements for court-  
13          appointed commissioners; providing guidance for  
14          determination of value; providing guidelines for  
15          covenant buyout; providing partition alternatives;  
16          providing considerations for partition in kind;  
17          providing court may order an open-market sale, sealed  
18          bids, or an auction of partition by sale properties;  
19          requiring a report of open-market sale; providing for  
20          real estate broker for open-market sale; providing  
21          required information that must be included in a  
22          report of open-market sale; providing for uniformity  
23          of application and construction; providing relation  
24          to the Electronic Signatures in Global and National  
            Commerce Act; providing for codification; and  
            providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1.           NEW LAW           A new section of law to be codified  
in the Oklahoma Statutes as Section 1520.1 of Title 12, unless there  
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma  
2 Farmland and Wealth Preservation Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1520.2 of Title 12, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in this act:

7 1. "Ascendant" means an individual who precedes another  
8 individual in lineage, in the direct line of ascent from the other  
9 individual;

10 2. "Collateral" means an individual who is related to another  
11 individual under the law of intestate succession of this state but  
12 who is not the other individual's ascendant or descendant;

13 3. "Descendant" means an individual who follows another  
14 individual in lineage, in the direct line of descent from the other  
15 individual;

16 4. "Determination of value" means a court order determining the  
17 fair market value of heir property under Section 6 or 10 of this act  
18 or adopting the valuation of the property agreed to by all  
19 cotenants;

20 5. "Heir property" means real property held in tenancy in  
21 common which satisfies all of the following requirements as of the  
22 filing of a partition action:

23 a. there is no agreement in a record binding all the  
24 cotenants which governs the partition of the property,

1           b. one or more of the cotenants acquired title from a  
2           relative, whether living or deceased, and

3           c. any of the following applies:

4           (1) twenty percent (20%) or more of the interests are  
5           held by cotenants who are relatives,

6           (2) twenty percent (20%) or more of the interests are  
7           held by an individual who acquired title from a  
8           relative, whether living or deceased, or

9           (3) twenty (20%) percent or more of the cotenants are  
10          relatives;

11          6. "Partition by sale" means a court-ordered sale of the entire  
12          heir property, whether by auction, sealed bids, or open-market sale  
13          conducted under Section 10 of this act;

14          7. "Partition in kind" means the division of heir property into  
15          physically distinct and separately titled parcels;

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

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

22          SECTION 3.        NEW LAW        A new section of law to be codified  
23          in the Oklahoma Statutes as Section 1520.3 of Title 12, unless there  
24          is created a duplication in numbering, reads as follows:

1       A. This act applies to partition actions filed on or after  
2 November 1, 2022.

3       B. In an action to partition real property under Section 1501.1  
4 et seq. of Title 12 of the Oklahoma Statutes, the court shall  
5 determine whether the property is heirs property. If the court  
6 determines that the property is heir property, the property must be  
7 partitioned under this act unless all of the cotenants otherwise  
8 agree in a record.

9       C. This act supplements Section 1501.1 et seq. of Title 12 of  
10 the Oklahoma Statutes and, if an action is governed by this act,  
11 replaces provisions of Section 1501.1 et seq. of Title 12 of the  
12 Oklahoma Statutes that are inconsistent with this act.

13       SECTION 4.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1520.4 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

16       A. This act does not limit or affect the method by which  
17 service of a petition in a partition action may be made.

18       B. If the plaintiff in a partition action seeks notice by  
19 publication and the court determines that the property may be heir  
20 property, the plaintiff, not later than ten (10) days after the  
21 court's determination, shall post and maintain while the action is  
22 pending a conspicuous sign on the property that is the subject of  
23 the action. The sign must state that the action has commenced and  
24 identify the name and address of the court and the common

1 designation by which the property is known. The court may require  
2 the plaintiff to publish on the sign the name of the plaintiff and  
3 the known defendants.

4 SECTION 5. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1520.5 of Title 12, unless there  
6 is created a duplication in numbering, reads as follows:

7 If the court appoints commissioners pursuant to Section 1501.1  
8 et seq. of Title 12 of the Oklahoma Statutes, each commissioner, in  
9 addition to the requirements and disqualifications applicable to  
10 commissioners in Section 1501.1 et seq. of Title 12 of the Oklahoma  
11 Statutes, must be disinterested and impartial and not a party to or  
12 a participant in the action.

13 SECTION 6. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1520.6 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. Except as otherwise provided in subsections B and C of this  
17 section, if the court determines that the property that is the  
18 subject of a partition action is heir property, the court shall  
19 determine the fair market value of the property by ordering an  
20 appraisal pursuant to subsection D of this section.

21 B. If all cotenants have agreed to the value of the property or  
22 to another method of valuation, the court shall adopt that value or  
23 the value produced by the agreed method of valuation.

24

1 C. If the court determines that the evidentiary value of an  
2 appraisal is outweighed by the cost of the appraisal, the court,  
3 after an evidentiary hearing, shall determine the fair market value  
4 of the property and send notice to the cotenants of the value.

5 D. If the court orders an appraisal, the court shall appoint a  
6 disinterested real estate appraiser licensed in this state to  
7 determine the fair market value of the property assuming sole  
8 ownership of the fee simple estate. On completion of the appraisal,  
9 the appraiser shall file a sworn or verified appraisal with the  
10 court.

11 E. If an appraisal is conducted pursuant to subsection D of  
12 this section, not later than ten (10) days after the appraisal is  
13 filed, the court shall send notice to each cotenant with a known  
14 address, stating:

- 15 1. The appraised fair market value of the property;
- 16 2. That the appraisal is available at the court clerk's office;
- 17 and
- 18 3. That a cotenant may file with the court an objection to the  
19 appraisal not later than thirty (30) days after the notice is sent,  
20 stating the grounds for the objection.

21 F. If an appraisal is filed with the court pursuant to  
22 subsection D of this section, the court shall conduct a hearing to  
23 determine the fair market value of the property not sooner than  
24 thirty (30) days after a copy of the notice of the appraisal is sent

1 to each party under subsection E of this section, whether or not an  
2 objection to the appraisal is filed under paragraph 3 of subsection  
3 E of this section. In addition to the court-ordered appraisal, the  
4 court may consider any other evidence of value offered by a party.

5 G. After a hearing under subsection F of this section, but  
6 before considering the merits of the partition action, the court  
7 shall determine the fair market value of the property and send  
8 notice to the parties of the value.

9 SECTION 7. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1520.7 of Title 12, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. If any cotenant requested partition by sale, after the  
13 determination of value under Section 6 of this act, the court shall  
14 send notice to the parties that any cotenant, except a cotenant that  
15 requested partition by sale, may buy all the interests of the  
16 cotenants that requested partition by sale.

17 B. Not later than forty-five (45) days after the notice is sent  
18 under subsection A of this section, any cotenant, except a cotenant  
19 that requested partition by sale, may give notice to the court that  
20 he or she elects to buy all the interests of the cotenants that  
21 requested partition by sale.

22 C. The purchase price for each interest of a cotenant that  
23 requested partition by sale is the value of the entire parcel  
24

1 determined under Section 6 of this act multiplied by the cotenant's  
2 fractional ownership of the entire parcel.

3 D. After expiration of the period in subsection B of this  
4 section, the following rules shall apply:

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

8 2. If more than one cotenant elects to buy all the interests of  
9 the cotenants that requested partition by sale, the court shall  
10 allocate the right to buy those interests among the electing  
11 cotenants based on each electing cotenant's existing fractional  
12 ownership of the entire parcel divided by the total existing  
13 fractional ownership of all cotenants electing to buy and shall send  
14 notice to all the parties of that fact and of the price to be paid  
15 by each electing cotenant; and

16 3. If no cotenant elects to buy all the interests of the  
17 cotenants that requested partition by sale, the court shall send  
18 notice to all the parties of that fact and resolve the partition  
19 action under subsections A and B of Section 8 of this act.

20 E. If the court sends notice to the parties under paragraph 1  
21 or 2 of subsection D of this section, the court shall set a date,  
22 not sooner than sixty (60) days after the date the notice was sent,  
23 by which electing cotenants must pay their apportioned price into  
24 the court. After this date, the following rules shall apply:



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

5        2. If no electing cotenant timely pays its apportioned price,  
6 the court shall resolve the partition action under subsections A and  
7 B of Section 8 of this act as if the interests of the cotenants that  
8 requested partition by sale were not purchased; and

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

13        F. Not later than twenty (20) days after the court gives notice  
14 pursuant to paragraph 3 of subsection E of this section, any  
15 cotenant that paid may elect to purchase all of the remaining  
16 interest by paying the entire price into the court. After the  
17 twenty-day period, the following rules shall apply:

18        1. If only one cotenant pays the entire price for the remaining  
19 interest, the court shall issue an order reallocating the remaining  
20 interest to that cotenant. The court shall issue promptly an order  
21 reallocating the interests of all of the cotenants and disburse the  
22 amounts held by it to the persons entitled to them;

23        2. If no cotenant pays the entire price for the remaining  
24 interest, the court shall resolve the partition action under

1 subsections A and B of Section 8 of this act as if the interests of  
2 the cotenants that requested partition by sale were not purchased;  
3 and

4 3. If more than one cotenant pays the entire price for the  
5 remaining interest, the court shall reapportion the remaining  
6 interest among those paying cotenants, based on each paying  
7 cotenant's original fractional ownership of the entire parcel  
8 divided by the total original fractional ownership of all cotenants  
9 that paid the entire price for the remaining interest. The court  
10 shall issue promptly an order reallocating all of the cotenants'  
11 interests, disburse the amounts held by it to the persons entitled  
12 to them, and promptly refund any excess payment held by the court.

13 G. Not later than forty-five (45) days after the court sends  
14 notice to the parties pursuant to subsection A of this section, any  
15 cotenant entitled to buy an interest under this section may request  
16 the court to authorize the sale as part of the pending action of the  
17 interests of cotenants named as defendants and served with the  
18 complaint but that did not appear in the action.

19 H. If the court receives a timely request under subsection G of  
20 this section, the court, after a hearing, may deny the request or  
21 authorize the requested sale on such terms as the court determines  
22 are fair and reasonable, subject to the following limitations:

23 1. A sale authorized under this subsection may occur only after  
24 the purchase prices for all interests subject to sale under

1 subsections A through F of this section have been paid into court  
2 and those interests have been reallocated among the cotenants as  
3 provided in those subsections; and

4 2. The purchase price for the interest of a nonappearing  
5 cotenant is based on the court's determination of value under  
6 Section 6 of this act.

7 SECTION 8. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1520.8 of Title 12, unless there  
9 is created a duplication in numbering, reads as follows:

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

20 B. If the court does not order partition in kind under  
21 subsection A of this section, the court shall order partition by  
22 sale pursuant to Section 10 of this act or, if no cotenant requested  
23 partition by sale, the court shall dismiss the action.

24

1 C. If the court orders partition in kind pursuant to subsection  
2 A of this section, the court may require that one or more cotenants  
3 pay one or more other cotenants amounts so that the payments, taken  
4 together with the value of the in-kind distributions to the  
5 cotenants, will make the partition in kind just and proportionate in  
6 value to the fractional interests held.

7 D. If the court orders partition in kind, the court shall  
8 allocate to the cotenants that are unknown, unlocatable, or the  
9 subject of a default judgement, if their interests were not bought  
10 out pursuant to Section 7 of this act, a part of the property  
11 representing the combined interests of these cotenants as determined  
12 by the court, and this part of the property shall remain undivided.

13 SECTION 9. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1520.9 of Title 12, unless there  
15 is created a duplication in numbering, reads as follows:

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

19 1. Whether the heir property practicably can be divided among  
20 the cotenants;

21 2. Whether partition in kind would apportion the property in  
22 such a way that the aggregate fair market value of the parcels  
23 resulting from the division would be materially less than the value  
24

1 of the property if it were sold as a whole, taking into account the  
2 condition under which a court-ordered sale likely would occur;

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

7 4. A cotenant's sentimental attachment to the property,  
8 including any attachment arising because the property has ancestral  
9 or other unique or special value to the cotenant;

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

13 6. The degree to which the cotenants have contributed their pro  
14 rata share of the property taxes, insurance, and other expenses  
15 associated with maintaining ownership of the property or have  
16 contributed to the physical improvement, maintenance, or upkeep of  
17 the property; and

18 7. Any other relevant factors.

19 B. The court may not consider any one factor in subsection A of  
20 this section to be dispositive without weighing the totality of all  
21 relevant factors and circumstances.

22 SECTION 10. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1520.10 of Title 12, unless  
24 there is created a duplication in numbering, reads as follows:

1       A. If the court orders a sale of heir property, the sale must  
2 be an open-market sale unless the court finds that a sale by sealed  
3 bids or an auction would be more economically advantageous and in  
4 the best interest of the cotenants as a group.

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

16       C. If the broker appointed under subsection B of this section  
17 obtains within a reasonable time an offer to purchase the property  
18 for at least the determination of value:

19       1. The broker shall comply with the reporting requirements in  
20 Section 11 of this act; and

21       2. The sale may be completed in accordance with state law other  
22 than this act.

23       D. If the broker appointed under subsection B of this section  
24 does not obtain within a reasonable time an offer to purchase the

1 property for at least the determination of value, the court, after  
2 hearing, may:

- 3 1. Approve the highest outstanding offer, if any;
- 4 2. Redetermine the value of the property and order that the  
5 property continue to be offered for sale for an additional time; or
- 6 3. Order that the property be sold by sealed bids or at an  
7 auction.

8 E. If the court orders a sale by sealed bids or an auction, the  
9 court shall set terms and conditions of the sale. If the court  
10 orders an auction, the auction must be conducted under Section  
11 1501.1 et seq. of Title 12 of the Oklahoma Statutes.

12 F. If a purchaser is entitled to a share of the proceeds of the  
13 sale, the purchaser is entitled to a credit against the price in an  
14 amount equal to the purchaser's share of the proceeds.

15 SECTION 11. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1520.11 of Title 12, unless  
17 there is created a duplication in numbering, reads as follows:

18 A. Unless required to do so within a shorter time by Section  
19 1501.1 et seq. of Title 12, a broker appointed under subsection B of  
20 Section 10 of this act to offer heir property for open-market sale  
21 shall file a report with the court not later than seven (7) days  
22 after receiving an offer to purchase the property for at least the  
23 value determined under Section 6 or 10 of this act.

24

1 B. The report required by subsection A of this section must  
2 contain the following information:

3 1. A description of the property to be sold to each buyer;

4 2. The name of each buyer;

5 3. The proposed purchase price;

6 4. The terms and conditions of the proposed sale, including the  
7 terms of any owner financing;

8 5. The amounts to be paid to lienholders;

9 6. A statement of contractual or other arrangements or  
10 conditions of the broker's commission; and

11 7. Other material facts relevant to the sale.

12 SECTION 12. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1520.12 of Title 12, unless  
14 there is created a duplication in numbering, reads as follows:

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

18 SECTION 13. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 1520.13 of Title 12, unless  
20 there is created a duplication in numbering, reads as follows:

21 This act modifies, limits, and supersedes the Electronic  
22 Signatures in Global and National Commerce Act, 15 U.S.C., Section  
23 7001 et seq., but does not modify, limit, or supersede Section  
24 101(c) of that act, 15 U.S.C., Section 7001(c), or authorize



1 | electronic delivery of any of the notices described in Section  
2 | 103(b) of that act, 15 U.S.C., Section 7003(b).

3 |       SECTION 14. This act shall become effective November 1, 2022.  
4 |

5 | COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
6 | 02/08/2022 - DO PASS.  
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