

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3712

By: Kannady

AS INTRODUCED

An Act relating to partition of property; creating the Uniform Partition of Heirs Property Act; providing short title; defining terms; providing for applicability of act; clarifying required methods of service of certain notice; establishing requirements for certain commissioners; establishing procedures for determination of value of certain property; establishing procedures for buyout of certain property by cotenant; allowing certain alternatives to partition of certain property; requiring court to consider certain factors for partition in kind; authorizing court to order certain types of sale; establishing procedures for certain types of sale; requiring report to court of open-market sale of certain property; construing provisions; stating applicability of certain act related to electronic signatures; 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 1518 of Title 12, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE. This act shall be known and may be cited as the "Uniform Partition of Heirs Property Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1519 of Title 12, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Uniform Partition of Heirs Property Act:

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

2. "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;

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

4. "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;

5. "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:

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

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

c. any of the following applies:

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

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

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

6. "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 7 or 10 of this act;

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

8. "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; and

9. "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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1520 of Title 12, unless there is created a duplication in numbering, reads as follows:

1 APPLICABILITY; RELATION TO OTHER LAW.

2 A. The Uniform Partition of Heirs Property Act shall apply to
3 partition actions filed on or after November 1, 2020.

4 B. In an action to partition real property under Chapter 28 of
5 Title 12 of the Oklahoma Statutes, the court shall determine whether
6 the property is heirs property. If the court determines that the
7 property is heirs property, the property must be partitioned under
8 this act unless all of the cotenants otherwise agree in a record.

9 C. This act supplements Chapter 28 of Title 12 of the Oklahoma
10 Statutes and, if an action is governed by this act, replaces
11 provisions of such chapter that are inconsistent with this act.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1521 of Title 12, unless there
14 is created a duplication in numbering, reads as follows:

15 SERVICE; POSTING.

16 A. The Uniform Partition of Heirs Property Act shall not limit
17 or affect the method by which service of a complaint in a partition
18 action may be made.

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

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

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1522 of Title 12, unless there
7 is created a duplication in numbering, reads as follows:

8 COMMISSIONERS. If the court appoints commissioners pursuant to
9 Chapter 28 of Title 12 of the Oklahoma Statutes, each commissioner,
10 in addition to the requirements and disqualifications applicable to
11 commissioners in such chapter, shall be disinterested and impartial
12 and not a party to or 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 1523 of Title 12, unless there
15 is created a duplication in numbering, reads as follows:

16 DETERMINATION OF VALUE.

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

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

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 parties 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 party 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 clerk's office; and
- 17 3. That a party may file with the court an objection to the
18 appraisal not later than thirty (30) days after the notice is sent,
19 stating the grounds for the objection.

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

1 objection to the appraisal is filed under paragraph 3 of subsection
2 E of this section. In addition to the court-ordered appraisal, the
3 court may consider any other evidence of value offered by a party.

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

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1524 of Title 12, unless there
10 is created a duplication in numbering, reads as follows:

11 COTENANT BUYOUT.

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 it elects to buy all the interests of the cotenants that requested
21 partition by sale.

22 C. The purchase price for each of the interests of a cotenant
23 that 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 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 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 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;

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 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; and

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 section as if the interests
2 of the cotenants that requested partition by sale were not
3 purchased; 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 hearing, may deny the request or
21 authorize the requested additional sale on such terms as the court
22 determines are fair and reasonable, subject to the following
23 limitations:
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1 1. A sale authorized under this subsection may occur only after
2 the purchase prices for all interests subject to sale under
3 subsections A through F of this section have been paid into court
4 and those interests have been reallocated among the cotenants as
5 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
8 Section 6 of this act.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1525 of Title 12, unless there
11 is created a duplication in numbering, reads as follows:

12 PARTITION ALTERNATIVES.

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

23 B. If the court does not order partition in kind under
24 subsection A of this section, the court shall order partition by

1 sale pursuant to Section 10 of this act or, if no cotenant requested
2 partition by sale, the court shall dismiss the action.

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

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

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1526 of Title 12, unless there
17 is created a duplication in numbering, reads as follows:

18 CONSIDERATIONS FOR PARTITION IN KIND.

19 A. In determining under subsection A of Section 8 of this act
20 whether partition in kind would result in manifest prejudice to the
21 cotenants as a group, the court shall consider the following:

22 1. Whether the heirs property practicably can be divided among
23 the cotenants;

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

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

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

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

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

21 7. Any other relevant factor.

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1527 of Title 12, unless there is created a duplication in numbering, reads as follows:

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 cotenants as a group.

B. If the court orders an open-market sale and the parties, not later than ten (10) 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 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

1 2. The sale may be completed in accordance with state law other
2 than the Uniform Partition of Heirs Property Act.

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

7 1. Approve the highest outstanding offer, if any;

8 2. Redetermine the value of the property and order that the
9 property continue to be offered for an additional time; or

10 3. Order that the property be sold by sealed bids or at an
11 auction.

12 E. If the court orders a sale by sealed bids or an auction, the
13 court shall set terms and conditions of the sale. If the court
14 orders an auction, the auction shall be conducted under Chapter 28
15 of Title 12 of the Oklahoma Statutes.

16 F. If a purchaser is entitled to a share of the proceeds of the
17 sale, the purchaser is entitled to a credit against the price in an
18 amount equal to the purchaser's share of the proceeds.

19 SECTION 11. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1528 of Title 12, unless there
21 is created a duplication in numbering, reads as follows:

22 REPORT OF OPEN-MARKET SALE.

23 A. Unless required to do so within a shorter time by Chapter 28
24 of Title 12 of the Oklahoma Statutes, a broker appointed under

1 subsection B of Section 10 of this act to offer heirs property for
2 open-market sale shall file a report with the court not later than
3 seven (7) days after receiving an offer to purchase the property for
4 at least the value determined under Section 6 or 10 of this act.

5 B. The report required by subsection A of this section shall
6 contain the following information:

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

8 2. The name of each buyer;

9 3. The proposed purchase price;

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

12 5. The amounts to be paid to lienholders;

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

15 7. Other material facts relevant to the sale.

16 SECTION 12. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1529 of Title 12, unless there
18 is created a duplication in numbering, reads as follows:

19 UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and
20 construing the Uniform Partition of Heirs Property Act,
21 consideration shall be given to the need to promote uniformity of
22 the law with respect to its subject matter among states that enact
23 it.

1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1530 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
5 COMMERCE ACT. The Uniform Partition of Heirs Property Act modifies,
6 limits and supersedes the Electronic Signatures in Global and
7 National Commerce Act, 15 U.S.C., Section 7001 et seq., but does not
8 modify, limit or supersede Section 101(c) of that act, 15 U.S.C.,
9 Section 7001(c), or authorize electronic delivery of any of the
10 notices described in Section 103(b) of that act, 15 U.S.C., Section
11 7003(b) .

12 SECTION 14. This act shall become effective November 1, 2020.

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