

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 855

By: Murdock

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:

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

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

4 As used in the Uniform Partition of Heirs Property Act:

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

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

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

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

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

- 21 a. there is no agreement in a record binding all the
22 cotenants which governs the partition of the property,
23 b. one or more of the cotenants acquired title from a
24 relative, whether living or deceased, and

1 c. any of the following applies:

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

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

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

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

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

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

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

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

23 A. This act shall apply to partition actions filed on or after
24 November 1, 2019.

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

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

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

12 A. This act shall not limit or affect the method by which
13 service of a complaint in a partition action may be made.

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

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

4 If the court appoints commissioners pursuant to Chapter 28 of
5 Title 12 of the Oklahoma Statutes, each commissioner, in addition to
6 the requirements and disqualifications applicable to commissioners
7 in such chapter, shall be disinterested and impartial and not a
8 party to or a participant in the action.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1523 of Title 12, unless there
11 is created a duplication in numbering, reads as follows:

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

17 B. If all cotenants have agreed to the value of the property or
18 to another method of valuation, the court shall adopt that value or
19 the value produced by the agreed method of valuation.

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

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

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

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

16 F. If an appraisal is filed with the court pursuant to
17 subsection D of this section, the court shall conduct a hearing to
18 determine the fair market value of the property not sooner than
19 thirty (30) days after a copy of the notice of the appraisal is sent
20 to each party under subsection E of this section, whether or not an
21 objection to the appraisal is filed under paragraph 3 of subsection
22 E of this section. In addition to the court-ordered appraisal, the
23 court may consider any other evidence of value offered by a party.
24

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

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

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

13 B. Not later than forty-five (45) days after the notice is sent
14 under subsection A of this section, any cotenant except a cotenant
15 that requested partition by sale may give notice to the court that
16 it elects to buy all the interests of the cotenants that requested
17 partition by sale.

18 C. The purchase price for each of the interests of a cotenant
19 that requested partition by sale is the value of the entire parcel
20 determined under Section 6 of this act multiplied by the cotenant's
21 fractional ownership of the entire parcel.

22 D. After expiration of the period in subsection B of this
23 section, the following rules apply:
24
25

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

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

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

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

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

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

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

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

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

19 2. If no cotenant pays the entire price for the remaining
20 interest, the court shall resolve the partition action under
21 subsections A and B of Section 8 of this section as if the interests
22 of the cotenants that requested partition by sale were not
23 purchased; and
24

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

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

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

21 1. A sale authorized under this subsection may occur only after
22 the purchase prices for all interests subject to sale under
23 subsections A through F of this section have been paid into court
24

1 and those interests have been reallocated among the cotenants as
2 provided in those subsections; and

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

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

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

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

23 C. If the court orders partition in kind pursuant to subsection
24 A of this section, the court may require that one or more cotenants

1 pay one or more other cotenants amounts so that the payments, taken
2 together with the value of the in-kind distributions to the
3 cotenants, will make the partition in kind just and proportionate in
4 value to the fractional interests held.

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

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

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

17 1. Whether the heirs property practicably can be divided among
18 the cotenants;

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

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

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

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

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

16 7. Any other relevant factor.

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

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

23 A. If the court orders a sale of heirs property, the sale shall
24 be an open-market sale unless the court finds that a sale by sealed
25

1 bids or an auction would be more economically advantageous and in
2 the best interest of the cotenants as a group.

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

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

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

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

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

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

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

4 3. Order that the property be sold by sealed bids or at an
5 auction.

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

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

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

16 A. Unless required to do so within a shorter time by Chapter 28
17 of Title 12 of the Oklahoma Statutes, a broker appointed under
18 subsection B of Section 10 to offer heirs property for open-market
19 sale shall file a report with the court not later than seven (7)
20 days after receiving an offer to purchase the property for at least
21 the value determined under Section 6 or 10 of this act.

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

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

1 2. The name of each buyer;

2 3. The proposed purchase price;

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

5 5. The amounts to be paid to lienholders;

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

8 7. Other material facts relevant to the sale.

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

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

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

18 This act modifies, limits, and supersedes the Electronic
19 Signatures in Global and National Commerce Act, 15 U.S.C. Section
20 7001 et seq., but does not modify, limit, or supersede Section
21 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
22 electronic delivery of any of the notices described in Section
23 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 14. This act shall become effective November 1, 2019.

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