

1 ENGROSSED HOUSE
2 BILL NO. 3528

By: Virgin of the House

3 and

4 Kidd of the Senate

5
6
7 [civil procedure - enacting the Oklahoma Farmland
8 and Wealth Preservation Act - effective date]
9
10

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

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

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

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

20 As used in this act:

21 1. "Ascendant" means an individual who precedes another
22 individual in lineage, in the direct line of ascent from the other
23 individual;
24

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

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

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

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

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

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

18 c. any of the following applies:

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

21 (2) twenty percent (20%) or more of the interests are
22 held by an individual who acquired title from a
23 relative, whether living or deceased, or
24

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

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

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

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

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

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

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

19 B. In an action to partition real property under Section 1501.1
20 et seq. of Title 12 of the Oklahoma Statutes, the court shall
21 determine whether the property is heirs property. If the court
22 determines that the property is heir property, the property must be
23 partitioned under this act unless all of the cotenants otherwise
24 agree in a record.

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

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

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

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

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

23 If the court appoints commissioners pursuant to Section 1501.1
24 et seq. of Title 12 of the Oklahoma Statutes, each commissioner, in

1 addition to the requirements and disqualifications applicable to
2 commissioners in Section 1501.1 et seq. of Title 12 of the Oklahoma
3 Statutes, must be disinterested and impartial and not a party to or
4 a participant in the action.

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

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

13 B. If all cotenants have agreed to the value of the property or
14 to another method of valuation, the court shall adopt that value or
15 the value produced by the agreed method of valuation.

16 C. If the court determines that the evidentiary value of an
17 appraisal is outweighed by the cost of the appraisal, the court,
18 after an evidentiary hearing, shall determine the fair market value
19 of the property and send notice to the cotenants of the value.

20 D. If the court orders an appraisal, the court shall appoint a
21 disinterested real estate appraiser licensed in this state to
22 determine the fair market value of the property assuming sole
23 ownership of the fee simple estate. On completion of the appraisal,
24

1 the appraiser shall file a sworn or verified appraisal with the
2 court.

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

7 1. The appraised fair market value of the property;

8 2. That the appraisal is available at the court clerk's office;
9 and

10 3. That a cotenant may file with the court an objection to the
11 appraisal not later than thirty (30) days after the notice is sent,
12 stating the grounds for the objection.

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

21 G. After a hearing under subsection F of this section, but
22 before considering the merits of the partition action, the court
23 shall determine the fair market value of the property and send
24 notice to the parties of the value.

1 SECTION 7. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 1520.7 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

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

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

14 C. The purchase price for each interest of a cotenant that
15 requested partition by sale is the value of the entire parcel
16 determined under Section 6 of this act multiplied by the cotenant's
17 fractional ownership of the entire parcel.

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

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

23 2. If more than one cotenant elects to buy all the interests of
24 the cotenants that requested partition by sale, the court shall

1 allocate the right to buy those interests among the electing
2 cotenants based on each electing cotenant's existing fractional
3 ownership of the entire parcel divided by the total existing
4 fractional ownership of all cotenants electing to buy and shall send
5 notice to all the parties of that fact and of the price to be paid
6 by each electing cotenant; and

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

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

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

20 2. If no electing cotenant timely pays its apportioned price,
21 the court shall resolve the partition action under subsections A and
22 B of Section 8 of this act as if the interests of the cotenants that
23 requested partition by sale were not purchased; and
24

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

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

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

15 2. If no cotenant pays the entire price for the remaining
16 interest, the court shall resolve the partition action under
17 subsections A and B of Section 8 of this act as if the interests of
18 the cotenants that requested partition by sale were not purchased;
19 and

20 3. If more than one cotenant pays the entire price for the
21 remaining interest, the court shall reapportion the remaining
22 interest among those paying cotenants, based on each paying
23 cotenant's original fractional ownership of the entire parcel
24 divided by the total original fractional ownership of all cotenants

1 that paid the entire price for the remaining interest. The court
2 shall issue promptly an order reallocating all of the cotenants'
3 interests, disburse the amounts held by it to the persons entitled
4 to them, and promptly refund any excess payment held by the court.

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

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

15 1. A sale authorized under this subsection may occur only after
16 the purchase prices for all interests subject to sale under
17 subsections A through F of this section have been paid into court
18 and those interests have been reallocated among the cotenants as
19 provided in those subsections; and

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

1 SECTION 8. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 1520.8 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

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

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

18 C. If the court orders partition in kind pursuant to subsection
19 A of this section, the court may require that one or more cotenants
20 pay one or more other cotenants amounts so that the payments, taken
21 together with the value of the in-kind distributions to the
22 cotenants, will make the partition in kind just and proportionate in
23 value to the fractional interests held.

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

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

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

13 1. Whether the heir property practicably can be divided among
14 the cotenants;

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

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

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

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

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

12 7. Any other relevant factors.

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

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

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

23 B. If the court orders an open-market sale and the parties, not
24 later than ten (10) days after the entry of the order, agree on a

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

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

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

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

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

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

22 2. Redetermine the value of the property and order that the
23 property continue to be offered for sale for an additional time; or
24

1 3. Order that the property be sold by sealed bids or at an
2 auction.

3 E. If the court orders a sale by sealed bids or an auction, the
4 court shall set terms and conditions of the sale. If the court
5 orders an auction, the auction shall be conducted under Section
6 1501.1 et seq. of Title 12 of the Oklahoma Statutes.

7 F. If a purchaser is entitled to a share of the proceeds of the
8 sale, the purchaser is entitled to a credit against the price in an
9 amount equal to the purchaser's share of the proceeds.

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

13 A. Unless required to do so within a shorter time by Section
14 1501.1 et seq. of Title 12 of the Oklahoma Statutes, a broker
15 appointed under subsection B of Section 10 of this act to offer heir
16 property for open-market sale shall file a report with the court not
17 later than seven (7) days after receiving an offer to purchase the
18 property for at least the value determined under Section 6 or 10 of
19 this act.

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

- 22 1. A description of the property to be sold to each buyer;
23 2. The name of each buyer;
24 3. The proposed purchase price;

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

3 5. The amounts to be paid to lienholders;

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

6 7. Other material facts relevant to the sale.

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

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

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

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

22 SECTION 14. This act shall become effective November 1, 2022.
23
24

1 Passed the House of Representatives the 23rd day of March, 2022.

2
3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2022.

6
7 _____
8 Presiding Officer of the Senate