

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3528

By: Virgin

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5
6 AS INTRODUCED

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

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

SECTION 2. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 1520.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

As used in this 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 heir property under Section 6 or 10 of this act or adopting the valuation of the property agreed to by all cotenants;

5. "Heir 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

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

9 6. "Partition by sale" means a court-ordered sale of the entire
10 heir 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 heir property into
13 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 1520.3 of Title 12, unless there
22 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

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

23 C. If the court determines that the evidentiary value of an
24 appraisal is outweighed by the cost of the appraisal, the court,

1 after an evidentiary hearing, shall determine the fair market value
2 of the property and send notice to the cotenants of the value.

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

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

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

19 F. If an appraisal is filed with the court pursuant to
20 subsection D of this section, the court shall conduct a hearing to
21 determine the fair market value of the property not sooner than
22 thirty (30) days after a copy of the notice of the appraisal is sent
23 to each party under subsection E of this section, whether or not an
24 objection to the appraisal is filed under paragraph 3 of subsection

1 E of this section. In addition to the court-ordered appraisal, the
2 court may consider any other evidence of value offered by a party.

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

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

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

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

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

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

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

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

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

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

23 1. If all electing cotenants timely pay their apportioned price
24 into court, the court shall issue an order reallocating all the

1 interests of the cotenants and disburse the amounts held by the
2 court to the persons entitled to them;

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

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

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

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

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

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

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

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

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

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 1520.8 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 great
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 section, the court shall order partition by
21 sale 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 judgement, 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, and this part of the property shall remain undivided.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1520.9 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 great prejudice to the
16 cotenants as a group, the court shall consider the following:

17 1. Whether the heir 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 factors.

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 1520.10 of Title 12, unless
22 there is created a duplication in numbering, reads as follows:

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

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 sale 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 must be conducted under Section
9 1501.1 et seq. 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 1520.11 of Title 12, unless
15 there is created a duplication in numbering, reads as follows:

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

22 B. The report required by subsection A of this section must
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 1520.12 of Title 12, unless
11 there is created a duplication in numbering, reads as follows:

12 In applying and construing this act, consideration must be given
13 to the need to promote uniformity of the law with respect to its
14 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 1520.13 of Title 12, unless
17 there 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, 2022.

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