

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

RELATING TO PROPERTY -- PARTITION

Introduced By: Senators McKenney, Burke, Appollonio, and Euer

Date Introduced: March 07, 2025

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Sections 34-15-1, 34-15-7 and 34-15-16 of the General Laws in Chapter 34-15 entitled "Partition" are hereby amended to read as follows:

34-15-1. Cotenants of estates of inheritance.

(a) All joint tenants, coparceners, and tenants in common, who now are or hereafter may be actually ~~seised~~ seized or possessed of any estate of inheritance in any lands, tenements or hereditaments, whether in their own right or as receiver appointed by any state or federal court, or as trustee in bankruptcy, may be compelled to make partition between them of those lands, tenements, and hereditaments by civil action.

(b) In an action for partition of real estate, the court shall make a determination if the parcel of real property is heirs property, as defined in § 34-3-4. If the court determines that the real property is heirs property, then the court shall proceed in accordance with §§ 34-15-7 and 34-15-16.

34-15-7. Notice to absent or unknown parties.

(a) In actions for partition of real estate, in which it may be alleged or may appear that any party or person interested therein, not a party plaintiff, is not a resident of the state, or where it is alleged or may appear that any person interested has left the state and it is not known where that person is or whether alive or dead, and, if dead, whether that person has left children, or whether some person unknown to the plaintiff is interested therein, the court before whom the action is pending may order notice to be given to any such party or person, by ordering a copy of its order

1 to be published in some newspaper published in this state for such length of time as it may deem
2 proper, and may also, in its discretion, order letters, postpaid and directed to the party or person, to
3 be deposited in the post office; and where notice is given as ordered by the court, it may proceed
4 and render judgment in the action in the same manner and with the same effect as if the party or
5 person had received actual or personal notice or had appeared and answered to the action.

6 (b) In actions for partition of real estate where a court has made the determination that the
7 real property in question is heirs property, and the plaintiff seeks notice by publication, then the
8 plaintiff, not later than ten (10) days after the court's determination, shall post and maintain while
9 the action is pending a conspicuous sign on the property that is the subject of the action. The sign
10 shall state that the action has commenced and identify the name and address of the court and the
11 common designation by which the property is known. The court may require the plaintiff to publish
12 on the sign the name of the plaintiff and the known defendants.

13 **34-15-16. Order of sale.**

14 (a) In an action for partition for real property that is not considered heirs property, the
15 superior court may, in its discretion, upon motion of any party to the action, order the whole
16 premises sought to be divided, or any particular lot, portion, or tract thereof or the interest of the
17 plaintiff or plaintiffs or of the defendant or defendants in the whole premises, or in any particular
18 lot, portion, or tract thereof, to be sold, either at public auction or by private contract, under the
19 direction of the court, by the commissioner or commissioners appointed to divide or sell the same;
20 provided, that if the sale is made by private contract, it shall not be made for less than the sum fixed
21 by the court in its decree authorizing the sale by private contract.

22 (b) In an action to partition real property where the court has determined that the property
23 is heirs property, the court shall proceed in accordance with the provisions of this section.

24 (1) Except as otherwise provided in subsections (b)(2) and (b)(3) of this section, if the court
25 determines that the property that is the subject of a partition action is heirs property, the court shall
26 determine the fair market value of the property by ordering an appraisal pursuant to subsection
27 (b)(4) of this section.

28 (2) If all cotenants have agreed to the value of the property or to another method of
29 valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

30 (3) If the court determines that the evidentiary value of an appraisal is outweighed by the
31 cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value
32 of the property and send notice to the parties of the value.

33 (4) If the court orders an appraisal, the court shall appoint a disinterested real estate
34 appraiser licensed in this state to determine the fair market value of the property assuming sole

1 ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn
2 or verified appraisal with the court.

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

6 (i) The appraised fair market value of the property;

7 (ii) That the appraisal is available at the clerk's office; and

8 (iii) That a party may file with the court an objection to the appraisal not later than thirty
9 (30) days after the notice is sent, stating the grounds for the objection.

10 (6) If an appraisal is filed with the court pursuant to subsection (b)(4) of this section, the
11 court shall conduct a hearing to determine the fair market value of the property not sooner than
12 thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection
13 (b)(5) of this section, whether or not an objection to the appraisal is filed under subsection (b)(5)(iii)
14 of this section. In addition to the court-ordered appraisal, the court may consider any other evidence
15 of value offered by a party.

16 (7) After a hearing under subsection (b)(6) of this section, but before considering the merits
17 of the partition action, the court shall determine the fair market value of the property and send
18 notice to the parties of the value.

19 (c) If any cotenant requested partition by sale, after the determination of value under
20 subsection (b) of this section, the court shall send notice to the parties that any cotenant except a
21 cotenant that requested partition by sale may buy all the interests of the cotenants that requested
22 partition by sale.

23 (1) Not later than forty-five (45) days after the notice is sent under this section, any
24 cotenant, except a cotenant that requested partition by sale, may give notice to the court that it elects
25 to buy all the interests of the cotenants that requested partition by sale.

26 (2) The purchase price for each of the interests of a cotenant that requested partition by sale
27 is the value of the entire parcel determined under subsection (b) of this section, multiplied by the
28 cotenant's fractional ownership of the entire parcel.

29 (3) After expiration of the period in subsection (c)(1) of this section, the following rules
30 apply:

31 (i) If only one cotenant elects to buy all the interests of the cotenants that requested partition
32 by sale, the court shall notify all the parties of that fact.

33 (ii) If more than one cotenant elects to buy all the interests of the cotenants that requested
34 partition by sale, the court shall allocate the right to buy those interests among the electing cotenants

1 based on each electing cotenant's existing fractional ownership of the entire parcel divided by the
2 total existing fractional ownership of all cotenants electing to buy and send notice to all the parties
3 of that fact and of the price to be paid by each electing cotenant.

4 (iii) If no cotenant elects to buy all the interests of the cotenants that requested partition by
5 sale, the court shall send notice to all the parties of that fact and resolve the partition action under
6 subsection (d) of this section.

7 (4) If the court sends notice to the parties under subsections (c)(3)(i) or (c)(3)(ii) of this
8 section, the court shall set a date, not sooner than sixty (60) days after the date the notice was sent,
9 by which electing cotenants shall pay their apportioned price into the court. After this date, the
10 following rules apply:

11 (i) If all electing cotenants timely pay their apportioned price into court, the court shall
12 issue an order reallocating all the interests of the cotenants and disburse the amounts held by the
13 court to the persons entitled to them.

14 (ii) If no electing cotenant timely pays its apportioned price, the court shall resolve the
15 partition action under subsection (d) of this section, as if the interests of the cotenants that requested
16 partition by sale were not purchased.

17 (iii) If one or more but not all of the electing cotenants fail to pay their apportioned price
18 on time, the court shall give notice to the electing cotenants that paid their apportioned price of the
19 interest remaining and the price for all that interest.

20 (5) Not later than twenty (20) days after the court gives notice pursuant to subsection
21 (c)(4)(iii) of this section, any cotenant that paid may elect to purchase all of the remaining interest
22 by paying the entire price into the court. After the twenty (20) day period, the following rules apply:

23 (i) If only one cotenant pays the entire price for the remaining interest, the court shall issue
24 an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order
25 reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons
26 entitled to them.

27 (ii) If no cotenant pays the entire price for the remaining interest, the court shall resolve
28 the partition action under subsection (d) of this section, as if the interests of the cotenants that
29 requested partition by sale were not purchased.

30 (iii) If more than one cotenant pays the entire price for the remaining interest, the court
31 shall reapportion the remaining interest among those paying cotenants, based on each paying
32 cotenant's original fractional ownership of the entire parcel divided by the total original fractional
33 ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue
34 promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the

1 persons entitled to them, and promptly refund any excess payment held by the court.

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

6 (7) If the court receives a timely request under subsection (c)(6) of this section, the court,
7 after hearing, may deny the request or authorize the requested additional sale on such terms as the
8 court determines are fair and reasonable, subject to the following limitations:

9 (i) A sale authorized under this section may occur only after the purchase prices for all
10 interests subject to sale under subsections (c)(1) through (c)(5) of this section have been paid into
11 court and those interests have been reallocated among the cotenants as provided in those
12 subsections; and

13 (ii) The purchase price for the interest of a non-appearing cotenant is based on the court's
14 determination of value under subsection (b) of this section.

15 (d) In an action to partition real property where the court has determined that the property
16 is heirs property and in an action where all the interests of all cotenants that requested partition by
17 sale are not purchased by other cotenants pursuant to subsection (c) of this section, or if after
18 conclusion of the buyout under subsection (c) of this section, a cotenant remains that has requested
19 partition in kind, the court shall order partition in kind unless the court, after consideration of the
20 factors listed in subsection (e) of this section, finds that partition in kind will result in manifest
21 prejudice to the cotenants as a group. In considering whether to order partition in kind, the court
22 shall approve a request by two (2) or more parties to have their individual interests aggregated. If
23 the court does not order partition in kind under this section, the court shall order partition by sale
24 pursuant to subsection (f) of this section, or, if no cotenant requested partition by sale, the court
25 shall dismiss the action. If the court orders partition in kind pursuant to this section, the court may
26 require that one or more cotenants pay one or more other cotenants amounts so that the payments,
27 taken together with the value of the in-kind distributions to the cotenants, will make the partition
28 in kind just and proportionate in value to the fractional interests held. If the court orders partition
29 in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a
30 default judgment, if their interests were not bought out pursuant to subsection (c) of this section, a
31 part of the property representing the combined interests of these cotenants as determined by the
32 court and this part of the property shall remain undivided.

33 (e) In determining under subsection (d) of this section, whether partition in kind would
34 result in manifest prejudice to the cotenants as a group, the court shall consider the following factors

1 but shall not consider any one factor to be dispositive without weighing the totality of all relevant
2 factors and circumstances:

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

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

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

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

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

18 (7) Any other relevant factor.

19 (f) The following shall control for the partition of heirs property by partition by sale.

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

23 (2) If the court orders an open-market sale and the parties, not later than ten (10) days after
24 the entry of the order, agree on a real estate broker licensed in this state to offer the property for
25 sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not
26 agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to
27 offer the property for sale and shall establish a reasonable commission. The broker shall offer the
28 property for sale in a commercially reasonable manner at a price no lower than the determination
29 of value and on the terms and conditions established by the court.

30 (3) If the broker appointed under subsection (f)(2) of this section, obtains within a
31 reasonable time an offer to purchase the property for at least the determination of value:

32 (i) The broker shall comply with the reporting requirements in subsection (g) of this
33 section; and

34 (ii) The sale may be completed in accordance with state law other than this section.

1 (4) If the broker appointed under subsection (f)(2) of this section does not obtain within a
2 reasonable time an offer to purchase the property for at least the determination of value, the court,
3 after hearing, may:

4 (i) Approve the highest outstanding offer, if any;

5 (ii) Redetermine the value of the property and order that the property continue to be offered
6 for an additional time; or

7 (iii) Order that the property be sold by sealed bids or at an auction.

8 (5) If the court orders a sale by sealed bids or an auction, the court shall set terms and
9 conditions of the sale. If the court orders an auction, the auction shall be conducted under subsection
10 (a) of this section.

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

13 (g) A broker appointed under subsection (f)(2) of this section, to offer heirs property for
14 open-market sale shall file a report with the court not later than seven (7) days after receiving an
15 offer to purchase the property for at least the value determined under subsections (b) or (f) of this
16 section. This report shall contain the following information:

17 (1) A description of the property to be sold to each buyer;

18 (2) The name of each buyer;

19 (3) The proposed purchase price;

20 (4) The terms and conditions of the proposed sale, including the terms of any owner
21 financing;

22 (5) The amounts to be paid to lienholders;

23 (6) A statement of contractual or other arrangements or conditions of the broker's
24 commission; and

25 (7) Other material facts relevant to the sale.

26 (h) The provisions of this chapter, modifies, limits, and supersedes the Electronic
27 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify,
28 limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery
29 of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

30 SECTION 2. Chapter 34-3 of the General Laws entitled "Tenancy in Common" is hereby
31 amended by adding thereto the following section:

32 **34-3-4. Definitions.**

33 As used in this title, unless the context otherwise requires:

34 (1) "Ascendant" means an individual who precedes another individual in lineage, in the

1 direct line of ascent from the other individual.

2 (2) “Collateral” means an individual who is related to another individual under the law of

3 intestate succession of this state but who is not the other individual’s ascendant or descendant.

4 (3) “Descendant” means an individual who follows another individual in lineage, in the

5 direct line of descent from the other individual.

6 (4) “Determination of value” means a court order determining the fair market value of heirs

7 property under § 34-15-16 or adopting the valuation of the property agreed to by all cotenants.

8 (5) “Heirs property” means real property held in tenancy in common which satisfies all of

9 the following requirements as of the filing of a partition action:

10 (i) There is no agreement in a record binding all the cotenants which governs the partition

11 of the property;

12 (ii) One or more of the cotenants acquired title from a relative, whether living or deceased;

13 and

14 (iii) Any of the following applies:

15 (A) Twenty percent (20%) or more of the interests are held by cotenants who a relatives;

16 (B) Twenty percent (20%) or more of the interests are held by an individual who acquired

17 title from a relative, whether living or deceased; or

18 (C) Twenty percent (20%) or more of the cotenants are relatives.

19 (6) “Partition by sale” means a court-ordered sale of the entire heirs property, whether by

20 auction, sealed bids, or open-market sale conducted under § 34-15-16.

21 (7) “Partition in kind” means the division of heirs property into physically distinct and

22 separately titled parcels.

23 (8) “Record” means information that is inscribed on a tangible medium or that is stored in

24 an electronic or other medium and is retrievable in perceivable form.

25 (9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise

26 related to another individual by blood, marriage, adoption, or law of this state other than this

27 section.

28 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- PARTITION

- 1 This act would create a cause of action for partition of heirs property held in tenancy in
- 2 common.
- 3 This act would take effect upon passage.

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LC002342
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