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A BILL

24-0156

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



To amend Title 16 of the District of Columbia Official Code to create procedures governing actions to partition real property, to require a public notice to be placed on the real property that is the subject of a partition action if the court orders notice by publication, to prescribe procedures used to determine the fair market value of real property that is the subject of a partition action, to give other cotenants a right of first refusal, to provide that if no other cotenant elects to purchase the ownership interest of a cotenant requesting a partition by sale, that the court order a partition in kind, unless the court determines that partition in kind will result in great prejudice to the cotenants as a group, to provide that if the court determines that a partition in kind would result in great prejudice to the cotenants as a group and orders a partition by sale, that the property must be offered for sale on the open market at a price not lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner, to require a real estate broker selected by the parties or the court to file a report with the court after receiving certain offers, and to prescribe procedures for owners of real property following a partition proceeding to pay all applicable taxes, fees, and costs and record deeds reflecting their interests.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Partition of Real Property Act of 2022”.

Sec. 2. Chapter 29 of Title 16 of the District of Columbia Code is amended as follows:

(a) The table of contents is amended by inserting the following subchapter III to read as follows:

“Subchapter III. Partition of Real Property.
“§ 16-2931. Definitions.

- 34 “§ 16-2932. Applicability; relation to other law.
- 35 “§ 16-2933. Commencement; service; notice by posting.
- 36 “§ 16-2934. Determination of value.
- 37 “§ 16-2935. Cotenant buyout.
- 38 “§ 16-2936. Partition procedures.
- 39 “§ 16-2937. Considerations for partition in kind.
- 40 “§ 16-2938. Open-market sale, sealed bids, or auction.
- 41 “§ 16-2939. Report of open-market sale.
- 42 “§ 16-2940. Procedures following partition of real property.
- 43 “§ 16-2941. Relation to Electronic Signatures in Global and National Commerce Act.”.

44 (b) A new subchapter III is added to read as follows:

45 “Subchapter III. Partition of Real Property.

46 “§ 16-2931. Definitions.

47 “For the purposes of this subchapter, the term:

48 “(1) “Determination of value” means a court order:

49 “(A) Determining the fair market value of real property pursuant to § 16-
50 2934 or § 16-2938; or

51 “(B) Adopting the valuation of real property agreed to by all cotenants.

52 “(2) “Partition by sale” means a court-ordered sale of the entire real property,
53 whether by auction, sealed bids, or open-market sale conducted pursuant to §16-2938.

54 “(3) “Partition in kind” means the division of real property into physically distinct
55 and separately titled parcels.

56 “(4) “Record” means information that is inscribed on a tangible medium or that is
57 stored in an electronic or other medium and is retrievable in perceivable form.

58 “§ 16-2932. Applicability.

59 “(a) Real property shall be partitioned under this subchapter unless all the cotenants agree
60 otherwise in a record.

61 “(b) This subchapter shall apply to partition actions filed on or after the effective date of
62 this subchapter.

63 “§ 16-2933. Commencement; service; notice by posting.

64 “(a)(1) A cotenant in a tenancy in common may initiate an action under this subchapter
65 by filing a complaint and shall name all cotenants as defendants.

66 “(2) In addition to any persons required to be named as defendants pursuant to
67 paragraph (1) of this subsection, the plaintiff may name as defendants all persons unknown,
68 claiming any legal or equitable right, title, estate, lien, or interest in the real property described in
69 the complaint adverse to the plaintiff’s title, or any cloud on the plaintiff’s title to the real
70 property.

71 “(3) The court on its own motion or on motion of any party may issue an order to
72 require joinder of any additional parties that are necessary or proper.

73 “(b) This subchapter shall not be construed to limit or affect the method by which service
74 of a complaint in a partition action may be made.

75 “(c)(1) If the court orders notice by publication, the plaintiff, not later than 10 days after
76 the court’s determination, shall post and maintain, while the action is pending, a conspicuous
77 sign on the real property that is the subject of the action.

78 “(2) The sign shall state that the action has commenced and identify the name and
79 address of the court and the street address of the real property, or other common designation, if
80 any.

81 “(3) The court may require the plaintiff to publish on the sign the name of the
82 plaintiff and the known defendants.

83 “§ 16-2934. Determination of value.

84 “(a) Except as otherwise provided in subsections (b) through (d) of this section, the court
85 shall determine the fair market value of the real property by ordering an appraisal pursuant to
86 subsection (e) of this section.

87 “(b) The court may accept a previously completed appraisal filed with the court as
88 evidence of value; provided, that:

89 “(1) The appraisal is dated not earlier than 6 months before the filing of the
90 action;

91 “(2) The appraisal was completed by a disinterested real estate appraiser licensed
92 in the District; and

93 “(3) No party objects to the appraised value.

94 “(c) If all cotenants have agreed to the value of the real property or to another method of
95 valuation, the court shall adopt that value or the value produced by the method of valuation.

96 “(d) If the court determines that the evidentiary value of an appraisal is outweighed by
97 the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market
98 value of the real property and send notice to the parties of the value.

99 “(e)(1) If the court orders an appraisal, the court shall appoint a disinterested real estate
100 appraiser licensed in the District to determine the fair market value of the property assuming sole
101 ownership of the fee simple estate.

102 “(2) On completion of the appraisal, the appraiser shall file a sworn or verified
103 appraisal with the court.

104 “(f) If an appraisal is conducted pursuant to subsection (e) of this section, not later than
105 10 days after the appraisal is filed, the court shall send notice to each party with a known
106 address, stating:

107 “(1) The appraised fair market value of the real property;

108 “(2) That the appraisal is available at the court clerk’s office; and

109 “(3) That a party may file with the court an objection to the appraisal not later
110 than 30 days after the notice is sent, stating the grounds for the objection.

111 “(g)(1) If an appraisal is filed with the court pursuant to subsection (e) of this section, the
112 court shall conduct a hearing to determine the fair market value of the real property not sooner

113 than 31 days after a copy of the notice of the appraisal is sent to each party pursuant to
114 subsection (f) of this section, whether or not an objection to the appraisal is filed as described in
115 subsection (f)(3) of this section.

116 “(2) In addition to the court-ordered appraisal, the court may consider any other
117 evidence of value offered by a party.

118 “(h) After a hearing conducted pursuant to subsection (g) of this section, but before
119 considering the merits of the partition action, the court shall determine the fair market value of
120 the real property and send notice to the parties of the value.

121 “§ 16-2935. Cotenant buyout.

122 “(a) If any cotenant requested partition by sale, after the determination of value pursuant
123 to § 16-2934, the court shall send notice to the parties that any cotenant, except a cotenant that
124 requested partition by sale, may buy all the interests of the cotenants that requested partition by
125 sale.

126 “(b) Not later than 45 days after the notice is sent pursuant to subsection (a) of this
127 section, any cotenant, except a cotenant that requested partition by sale, may give notice to the
128 court that it elects to buy all the interests of any of the cotenants that requested partition by sale.

129 “(c) The purchase price for each of the interests of a cotenant that requested partition by
130 sale shall be the value of the entire parcel determined pursuant to § 16-2934, multiplied by the
131 cotenant’s fractional ownership of the entire parcel.

132 “(d) After expiration of the time period described in subsection (b) of this section, the
133 following shall apply:

134 “(1) If only one cotenant elects to buy all the interests of the cotenants that
135 requested partition by sale, the court shall notify all the parties of that fact;

136 “(2) If more than one cotenant elects to buy all the interests of the cotenants that
137 requested partition by sale, the court shall:

138 “(A) Allocate the right to buy those interests among the electing cotenants
139 based on each electing cotenant’s existing fractional ownership of the entire parcel, divided by
140 the total existing fractional ownership of all cotenants electing to buy;

141 “(B) Notify all the parties that more than one cotenant elected to buy all
142 the interests of the cotenants that requested partition by sale; and

143 “(C) Send notice to all the parties of the price to be paid by each electing
144 cotenant; or

145 “(3) If no cotenant elects to buy all the interests of the cotenants that requested
146 partition by sale, the court shall send notice to all the parties of that fact and resolve the partition
147 action pursuant to § 16-2936(a) and (b).

148 “(e)(1) If the court sends notice to the parties pursuant to subsection (d)(1) or (2) of this
149 section, the court shall set a date, not sooner than 60 days after the date the notice was sent, by
150 which electing cotenants shall pay their apportioned price into the court.

151 “(2) After the date set by the court under paragraph (1) of this subsection, the
152 following shall apply:

153 “(A) If all electing cotenants timely pay their apportioned price into court,
154 the court shall issue an order reallocating all the interests of the cotenants and disburse the
155 amounts held by the court to the persons entitled to the funds;

156 “(B) If no electing cotenant timely pays its apportioned price, the court
157 shall resolve the partition pursuant to § 16-2936(a) and (b); or

158 “(C) If one or more, but not all, of the electing cotenants fail to pay their
159 apportioned price on time, the court, on motion, shall give notice to the electing cotenants that
160 paid their apportioned price of the interest remaining and the price for that interest.

161 “(f)(1) Not later than 20 days after the court gives notice pursuant to subsection (e)(2)(C)
162 of this section, any cotenant that paid the cotenant’s apportioned price may elect to purchase all
163 the remaining interest by paying the entire price of the remaining interest into the court.

164 “(2) After the 20-day period described in paragraph (1) of this subsection, the
165 following shall apply:

166 “(A) If only one cotenant pays the entire price for the remaining interest,
167 the court shall:

168 “(i) Issue an order reallocating the remaining interest to that
169 cotenant; and

170 “(ii) Promptly issue an order reallocating the interests of all of the
171 cotenants and disburse the amounts held by it to the persons entitled to them;

172 “(B) If no cotenant pays the entire price for the remaining interest, the
173 court shall resolve the partition action pursuant to § 16-2936(a) and (b); or

174 “(C) If more than one cotenant pays the entire price for the remaining
175 interest, the court shall:

176 “(i) Reapportion the remaining interest among those paying
177 cotenants, based on each paying cotenant’s original fractional ownership of the entire parcel,
178 divided by the total original fractional ownership of all cotenants that paid the entire price for the
179 remaining interest; and

180 “(ii) Promptly issue an order reallocating all of the cotenants’
181 interests, disburse the amounts held by it to the persons entitled to them, and promptly refund
182 any excess payment held by the court.

183 “(g) Not later than 45 days after the court sends notice to the parties pursuant to
184 subsection (a) of this section, any cotenant entitled to buy an interest under this section may
185 request the court to authorize, as part of the pending action, the sale of the interests of a cotenant
186 named as a defendant and served with the complaint but that did not appear in the action.

187 “(h) If the court receives a timely request pursuant to subsection (g) of this section, the
188 court, after a hearing, may deny the request or authorize the requested additional sale on such
189 terms as the court determines are fair and reasonable, subject to the following limitations:

190 “(1) A sale authorized pursuant to this subsection may occur only after the
191 purchase prices for all interests subject to sale pursuant to subsections (a) through (f) of this
192 section have been paid into court and those interests have been reallocated among the cotenants
193 as provided in those subsections; and

194 “(2) The purchase price for the interest of a nonappearing cotenant shall be based
195 on the court’s determination of value pursuant to § 16-2934.

196 “§ 16-2936. Partition procedures.

197 “(a)(1) If no cotenant requested partition by sale, or, if after completion of the procedures
198 described in § 16-2935, a cotenant remains that has requested partition in kind, the court shall
199 order partition in kind unless the court, after consideration of the factors listed in § 16-2937,
200 finds that partition in kind will result in great prejudice to the cotenants as a group.

201 “(2) In considering whether to order partition in kind, the court shall approve a
202 request by 2 or more parties to have their individual interests aggregated.

203 “(b) If the court does not order partition in kind pursuant to subsection (a) of this section,
204 the court shall order partition by sale pursuant to § 16-2938, or, if no cotenant requested partition
205 by sale, the court shall dismiss the action.

206 “(c) If the court orders partition in kind pursuant to subsection (a) of this section, the
207 court may require that one or more cotenants pay one or more other cotenants amounts so that
208 the payments, taken together with the value of the in-kind distributions to the cotenants, will
209 make the partition in kind just and proportionate in value to the fractional interests held.

210 “(d) If the court orders partition in kind, the court shall allocate to the cotenants that are
211 unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out
212 pursuant to § 16-2935(g), a part of the real property representing the combined interests of these
213 cotenants as determined by the court, and this part of the real property shall remain undivided.

214 “§ 16-2937. Considerations for partition in kind.

215 “(a) In determining pursuant to § 16-2936(a) whether partition in kind would result in
216 great prejudice to the cotenants as a group, the court shall consider the following factors:

217 “(1) Whether the real property practicably can be divided among the cotenants;

218 “(2) Whether partition in kind would apportion the real property in such a way
219 that the aggregate fair market value of the parcels resulting from the division would be materially
220 less than the value of the real property if it were sold as a whole, taking into account the
221 condition under which a court-ordered sale likely would occur;

222 “(3) Evidence of the collective duration of ownership or possession of the real
223 property by a cotenant and one or more predecessors in title or predecessors in possession to the
224 cotenant who are or were relatives of the cotenant or each other;

225 “(4) A cotenant’s sentimental attachment to the real property, including any
226 attachment arising because the real property has ancestral or other unique or special value to the
227 cotenant;

228 “(5) The lawful use being made of the real property by a cotenant and the degree
229 to which the cotenant would be harmed if the cotenant could not continue the same use of the
230 real property;

231 “(6) The degree to which the cotenants have contributed their pro rata share of the
232 real property taxes, insurance, and other expenses associated with maintaining ownership of the
233 real property or have contributed to the physical improvement, maintenance, or upkeep of the
234 real property; and

235 “(7) Any other relevant factor.

236 “(b) The court shall not consider any one factor in subsection (a) of this section to be
237 dispositive without weighing the totality of all relevant factors.

238 “§ 16-2938. Open-market sale, sealed bids, or auction.

239 “(a) If the court orders a sale of real property, the sale shall be an open-market sale unless
240 the court finds that a sale by sealed bids or an auction would be more economically advantageous
241 and in the best interest of the cotenants as a group.

242 “(b)(1) If the court orders an open-market sale and the parties, not later than 10 days after
243 the entry of the order, agree on a real estate broker licensed in the District to offer the property
244 for sale, the court shall appoint the broker and establish a reasonable commission.

245 “(2) If the parties do not agree on a real estate broker, the court shall appoint a
246 disinterested real estate broker licensed in the District to offer the real property for sale and shall
247 establish a reasonable commission.

248 “(3) The real estate broker shall offer the real property for sale in a commercially
249 reasonable manner at a price no lower than the determination of value and on the terms and
250 conditions established by the court.

251 “(c) If the real estate broker appointed pursuant to subsection (b) of this section obtains,
252 within a reasonable time, an offer to purchase the real property for at least the determination of
253 value:

254 “(1) The broker shall comply with the reporting requirements in § 16-2939; and

255 “(2) The sale may be completed in accordance with any applicable District law.

256 “(d) If the broker appointed pursuant to subsection (b) of this section does not obtain,
257 within a reasonable time, an offer to purchase the real property for at least the determination of
258 value, the court, after a hearing, may:

259 “(1) Approve the highest outstanding offer, if any;

260 “(2) Redetermine the value of the real property and order that the real property
261 continue to be offered for an additional time; or

262 “(3) Order that the real property be sold by sealed bids or at an auction.

263 “(e)(1) If the court orders a sale by sealed bids or an auction, the court shall set terms and
264 conditions of the sale.

265 “(2) If the court orders an auction, the auction shall be conducted in a
266 commercially reasonable manner that is fair to all concerned.

267 “(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser shall be
268 entitled to a credit against the price in an amount equal to the purchaser’s share of the proceeds.

269 “§ 16-2939. Report of open-market sale.

270 “(a) A broker appointed pursuant to § 16-2938(b) to offer real property for open-market
271 sale shall file a report with the court no later than 7 days after receiving an offer to purchase the
272 real property for at least the value determined pursuant to § 16-2934 or § 16-2938.

273 “(b) The report required by subsection (a) of this section shall contain the following
274 information:

275 “(1) A description of the real property to be sold to the buyer;

276 “(2) The name of the buyer;

277 “(3) The proposed purchase price;

278 “(4) The terms and conditions of the proposed sale, including the terms of any
279 owner financing;

280 “(5) The amount to be paid to lienholders;

281 “(6) A statement of contractual or other arrangements or conditions of the real
282 estate broker’s commission; and

283 “(7) Other material facts relevant to the sale.

284 “§ 16-2940. Procedures following partition of real property.

285 “(a)(1) If the court orders the partition of real property that is less than the full interest of
286 a record or tax lot, the court shall order the Surveyor of the District of Columbia to create

287 corresponding subdivisions or the Office of Tax and Revenue to create corresponding division of
288 lots.

289 “(2) Prior to the creation of such subdivisions, the owners of the lots to be
290 subdivided shall pay all applicable taxes, fees, and costs related to the partition and subdivision
291 pursuant to and under conditions required under § 47-832.

292 “(3) Subdivisions shall become effective in the records of the Office of Tax and
293 Revenue under § 47-832.

294 “(4) The owners of the subdivided lots shall, within 30 days from the issuance of
295 new lot numbers, record deeds reflecting their interests in the subdivided lots with the Recorder
296 of Deeds.

297 “(b) If a tenant in common buys out the interest of one or more tenants in common in real
298 property, the tenant buying out the interests in common shall timely record a deed reflecting the
299 square and lot and the resulting interest of such tenant in common, and shall pay applicable
300 taxes, fees, and costs on the deed; except, that, if the tenant buying out the interests fails to make
301 payment on all applicable taxes, fees, and costs on the deed, the transferor of the interests shall
302 be jointly and severally liable with the transferee for payment of said taxes, fees, and costs.

303 “§ 16-2941. Relation to Electronic Signatures in Global and National Commerce Act.

304 ““This subchapter modifies, limits, and supersedes the Electronic Signatures in Global and
305 National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*)

306 (“Act”), but shall not be construed to modify, limit, or supersede section 101(c) of the Act, or
307 authorize electronic delivery of any of the notices described in section 103(b) of the Act.”.

308 Sec. 3. Fiscal impact statement.

309 The Council adopts the fiscal impact statement in the committee report as the fiscal
310 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
311 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

312 Sec. 4. Effective date.

313 This act shall take effect following approval by the Mayor (or in the event of veto by the
314 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
315 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
316 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
317 Columbia Register.