

AN ACT

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 adding the following Subchapter III to read as follows:

“Subchapter III. Partition of Real Property.

“§ 16-2931. Definitions.

“§ 16-2932. Applicability; relation to other law.

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

“§ 16-2934. Determination of value.

“§ 16-2935. Cotenant buyout.

“§ 16-2936. Partition procedures.

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

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

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

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

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

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

“Subchapter III. Partition of Real Property.

“§ 16-2931. Definitions.

“For the purposes of this subchapter, the term:

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

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

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

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

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

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

“§ 16-2932. Applicability.

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

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

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

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

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

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

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

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

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

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

“§ 16-2934. Determination of value.

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

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

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

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

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

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

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

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

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

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

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

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

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

“(g)(1) If an appraisal is filed with the court pursuant to subsection (e) of this section, the court shall conduct a hearing to determine the fair market value of the real property not sooner than 31 days after a copy of the notice of the appraisal is sent to each party pursuant to subsection (f) of this section, whether or not an objection to the appraisal is filed as described in subsection (f)(3) of this section.

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

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

“§ 16-2935. Cotenant buyout.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“§ 16-2936. Partition procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

“(7) Any other relevant factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- “(2) The name of the buyer;
- “(3) The proposed purchase price;
- “(4) The terms and conditions of the proposed sale, including the terms of any owner financing;
- “(5) The amount to be paid to lienholders;
- “(6) A statement of contractual or other arrangements or conditions of the real estate broker’s commission; and
- “(7) Other material facts relevant to the sale.

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

“(a)(1) If the court orders the partition of real property that is less than the full interest of a record or tax lot, the court shall order the Surveyor of the District of Columbia to create corresponding subdivisions or the Office of Tax and Revenue to create corresponding division of lots.

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

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

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

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

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

“This subchapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*) (“Act”), but shall not be construed to modify, limit, or supersede section 101(c) of the Act, or authorize electronic delivery of any of the notices described in section 103(b) of the Act.”

Sec. 3. Fiscal impact statement.

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

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Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia