

HOUSE BILL No. 1037

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-17.

Synopsis: Partition of heirs property. Provides procedures for the partition of property that is determined by a court to be heirs property.

Effective: July 1, 2021.

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January 4, 2021, read first time and referred to Committee on Judiciary.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1037

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-17-4-2, AS AMENDED BY P.L.84-2016,
2 SECTION 134, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person described in section
4 1(a) of this chapter may file a petition to compel partition in the circuit
5 court, superior court, or probate court having probate jurisdiction of the
6 county in which the land or any part of the land is located.
7 (b) A petition filed under subsection (a) must contain the following:
8 (1) A description of the premises.
9 (2) The rights and titles in the land of the parties interested.
10 (c) At the time a person files a petition under subsection (a), the
11 person shall cause a title search to be made regarding the land that is
12 the subject of the partition. The person shall file a copy of the results
13 of the title search with the court.
14 (d) **If the court in which the petition is filed determines the land**
15 **is heirs property (as defined in IC 32-17-4.5-6), the partition must**
16 **proceed under IC 32-17-4.5, unless all the parties consent in**
17 **writing otherwise.**



SECTION 2. IC 32-17-4-2.5, AS AMENDED BY P.L.45-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2.5. (a) **For partition actions under this chapter**, not later than forty-five (45) days after the court has acquired jurisdiction over all the parties who have an interest in the property that is the subject of the action, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution.

(b) Except as provided in subsection (c), mediation of the case may not begin until an appraiser files an appraisal report with the court.

(c) If each party waives the appraisal of the property, the case may move to mediation without the filing of an appraisal report.

(d) In its order referring the matter for mediation, the court shall advise the parties:

(1) that the real or personal property will be sold if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued; and

(2) that the parties may agree upon a method of the sale of the property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

(1) order the property to be sold using the method that all the parties agree upon; or

(2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6.

(h) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required



under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and special assessments except prescriptive easements, easements of record, and irrevocable licenses, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(i) The person who causes a title search to be conducted under section 2 of this chapter or a title or lien search to be conducted under IC 29-1-17-11 is entitled to reimbursement from the proceeds of the sale.

(j) Any person who has paid a tax or special assessment on the property is entitled to pro rata reimbursement from the proceeds of the sale.

(k) Any person may advertise a sale under this section at the person's own expense, but is not entitled to reimbursement for these expenses.

(l) After deduction of the amounts described in subsections (h), (i), and (j) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

(m) If a party having an ownership interest in the property becomes the successful purchaser of the property either through agreed settlement or through auction, that person shall be given a full credit based on the percentage of the person's interest in the property before the purchase.

(n) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

(1) wish to sell some or all of the property through a real estate professional;

(2) have jointly selected a real estate professional; and

(3) have agreed upon a listing price for the property;

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (h).

SECTION 3. IC 32-17-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:



Chapter 4.5. Partition of Heirs Property

Sec. 1. (a) This chapter applies to partition actions for heirs property filed after June 30, 2021.

(b) This chapter supplements IC 32-17-4. In the event a provision in this chapter is inconsistent with IC 32-17-4, the provision in this chapter applies.

Sec. 2. As used in this chapter, "ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

Sec. 3. As used in this chapter, "collateral" means an individual who is related to another individual under the law of intestate succession under IC 29-1-2 but who is not the other individual's ascendant or descendant.

Sec. 4. As used in this chapter, "descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

Sec. 5. As used in this chapter, "determination of value" means a court order determining the fair market value of heirs property under section 12 or 17 of this chapter or adopting the valuation of the property agreed to by all cotenants, at mediation or otherwise.

Sec. 6. As used in this chapter, "heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

- (1) There is no written agreement binding all the cotenants that governs the partition of the property.**
- (2) One (1) or more of the cotenants acquired title from a relative, whether living or deceased.**
- (3) Twenty percent (20%) or more of the:**
 - (A) interests are held by cotenants who are relatives;**
 - (B) interests are held by an individual who acquired title from a relative, whether living or deceased; or**
 - (C) cotenants are relatives.**

Sec. 7. As used in this chapter, "partition by sale" means a court ordered sale of the entire heirs property, whether by auction, sealed bids, or open market sale conducted under section 17 of this chapter.

Sec. 8. As used in this chapter, "partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

Sec. 9. As used in this chapter, "relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or state law other



1 than this chapter.

2 Sec. 10. (a) This chapter does not limit or affect the method by
3 which service of a complaint in a partition action may be made.

4 (b) If the plaintiff in a partition action seeks an order of notice
5 by publication and the court determines that the property may be
6 heirs property, the plaintiff, not later than ten (10) days after the
7 court's ruling, shall post and maintain while the action is pending
8 a conspicuous sign on the property that is the subject of this action.
9 The sign must:

10 (1) state that the action has commenced; and

11 (2) identify the:

12 (A) name and address of the court; and

13 (B) common designation by which the property is known.

14 The court may require the plaintiff to publish on the sign the name
15 of the plaintiff and all known defendants.

16 Sec. 11. (a) Not later than forty-five (45) days after the court has
17 determined the property is heirs property subject to this chapter,
18 the court shall refer the matter to mediation in accordance with the
19 Indiana rules of alternative dispute resolution.

20 (b) Except as provided in subsection (c), mediation of the case
21 may not begin until an appraiser files an appraisal report with the
22 court.

23 (c) If each cotenant waives the appraisal of the property, the
24 case may move to mediation without the filing of an appraisal
25 report.

26 (d) If the cotenants do not waive the appraisal under subsection
27 (c), the court shall appoint a disinterested real estate appraiser
28 licensed in Indiana to determine the fair market value of the
29 property assuming sole ownership of the fee simple estate. On
30 completion of the appraisal, the appraiser shall file a sworn or
31 verified appraisal with the court.

32 (e) Not later than ten (10) days after the appraisal is filed, the
33 court shall send notice to each cotenant with a known address,
34 stating:

35 (1) the appraised fair market value of the property; and

36 (2) that the appraisal is available at the clerk's office.

37 Sec. 12. (a) If the mediation required under section 11 of this
38 chapter is unsuccessful, the court shall hold an evidentiary hearing
39 to determine the fair market value of the property. In addition to
40 an appraisal conducted under section 11 of this chapter, the court
41 may consider any other evidence of value offered by a cotenant. If
42 the cotenants waived the appraisal of the property, the court may



1 order an appraisal as provided in section 11(c) and 11(d) of this
 2 chapter. After the evidentiary hearing, but before considering the
 3 merits of the partition action, the court must determine the fair
 4 market value and notify the cotenants of the value.

5 (b) If the mediation required under section 11 of this chapter is
 6 successful, the court shall adopt the value agreed to by the
 7 cotenants at the mediation.

8 Sec. 13. (a) If any cotenant requested partition by sale, after the
 9 determination of fair market value under section 12 of this chapter,
 10 the court shall notify the cotenants that any cotenant, except a
 11 cotenant that requested partition by sale, may buy all the interests
 12 of the cotenants that requested partition by sale.

13 (b) Not later than forty-five (45) days after notice is sent under
 14 subsection (a), any cotenant, except a cotenant that requested
 15 partition by sale, may give notice to the court that the cotenant
 16 elects to buy all the interests of the cotenants that requested
 17 partition by sale.

18 (c) The purchase price for each of the interests of a cotenant
 19 that requested partition by sale is the value of the entire parcel
 20 determined under section 12 of this chapter multiplied by the
 21 cotenant's fractional ownership of the entire parcel.

22 (d) After expiration of the period in subsection (b), the following
 23 rules apply:

24 (1) The court shall notify all parties if only one (1) cotenant
 25 elects to buy all the interests of the cotenants that requested
 26 partition by sale.

27 (2) If more than one (1) cotenant elects to buy all the interests
 28 of the cotenants that requested partition by sale, the court
 29 shall allocate the right to buy those interests among the
 30 electing cotenants based on each electing cotenant's existing
 31 fractional ownership of the entire parcel divided by the total
 32 existing fractional ownership of all cotenants electing to buy
 33 and send notice to all parties of that fact and of the price to be
 34 paid by each electing cotenant.

35 (3) The court shall notify all parties if no cotenant elects to
 36 buy all the interests of the cotenants that requested partition
 37 by sale, and resolve the partition action under section 14 of
 38 this chapter.

39 (e) If the court sends notice to the parties under subsection
 40 (d)(1) or (d)(2), the court shall set a date, not earlier than sixty (60)
 41 days after the date the notice was sent, by which electing cotenants
 42 must pay their apportioned price to the court. After that date, the



following rules apply:

(1) If all electing cotenants timely pay the apportioned price to the 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 them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under section 14(a) and 14(b) of this chapter as if the interests of the cotenants that requested partition by sale were not purchased.

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

(f) Not later than twenty (20) days after the court gives notice under subsection (e)(3), any cotenant that paid its apportioned price may elect to purchase all of the remaining interest by paying the entire price to the court. After the twenty (20) day period, the following rules apply:

(1) If only one (1) cotenant pays the entire price for the remaining interest, the court shall:

(A) issue an order reallocating the remaining interest to that cotenant;

(B) issue an order reallocating the interests of all of the cotenants; and

(C) disburse the amounts held by it to the persons entitled to the amounts.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under section 14(a) and 14(b) of this chapter as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one (1) cotenant pays the entire price for the remaining interest, the court shall:

(A) reapportion the remaining interest to 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;

(B) issue promptly an order reallocating all of the cotenants' interests;

(C) disburse the amounts held by it to the persons entitled to them; and

(D) promptly refund any excess payment held by the court.



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

(h) If the court receives a timely request under subsection (g), 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 under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid to the court and those interests have been reallocated to the cotenants as provided in those subsections.

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under section 12 of this chapter.

Sec. 14. (a) If:

(1) all the interests of all cotenants that request partition by sale are not purchased by other cotenants pursuant to section 13 of this chapter; or

(2) after conclusion of the buyout under section 13 of this chapter, 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 section 15 of this chapter, finds that partition in kind will result in great prejudice to the cotenants as a group.

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

(c) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to section 17 of this chapter or, if no cotenant requested partition by sale, the court shall dismiss the action.

(d) If the court orders partition in kind pursuant to subsection (a), the court may require that one (1) or more cotenants pay one (1) 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.



(e) If the court orders partition in kind pursuant to subsection (a), 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 section 13 of this chapter, a part of the property representing the combined interests of those cotenants as determined by the court.

Sec. 15. (a) In determining under section 14(a) of this chapter whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the heirs property practicably can be divided among the cotenants.

(2) Whether partition in kind would apportion the 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 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 property by a cotenant and one (1) 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 property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant.

(5) The lawful use being made of the 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 property.

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

(7) Any other factor the court considers relevant.

(b) The court may not consider any one (1) factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

Sec. 16. (a) If the court orders partition in kind under section 14 of this chapter, the court must appoint three (3) individuals as commissioners who:

(1) are knowledgeable about the type of property to be partitioned;



(2) are not a cotenant or party with an interest in the partition action; and

(3) are not related to any of the cotenants;

who will make partition of the property in accordance with the judgment of the court.

(b) Before discharging their duties, the commissioners appointed under subsection (a) must take an oath to faithfully perform the duties required under this section. The oath must:

(1) if taken in open court, be entered in the court's order book; and

(2) if not taken in open court, be endorsed on the warrant issued to the commissioners to make the partition.

(c) The commissioners shall make a report to the court regarding their activities under this section. The report must be made in open court or by signing and swearing to the report before a person authorized to administer oaths. The report must specify the shares assigned to each cotenant by:

(1) divisions;

(2) lots;

(3) metes and bounds; or

(4) plats.

(d) If the court confirms a report filed under subsection (c), the court must enter a judgment of partition in accordance with the report and record the report and judgment in a separate book kept for that purpose.

(e) Before confirming a report filed under subsection (c), the court may, if it determines good cause exists, set aside the report. If the court sets aside the report, the court may either:

(1) recommit the duty of partition to the same commissioners;

or

(2) appoint other commissioners in the same manner as the original commissioners;

and the commissioners must perform the duties described in this section.

Sec. 17. (a) If the court orders a sale of heirs property, the sale must be an open market sale unless the court finds that a sale by sealed bids or auction would be more economically advantageous and in the best interests of the cotenants as a group.

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



1 commission. If the parties do not agree on a broker, the court shall
 2 appoint a disinterested real estate broker licensed in Indiana to
 3 offer the property for sale and shall establish a reasonable
 4 commission. The broker shall offer the property for sale in a
 5 commercially reasonable manner at a price not lower than the
 6 determination of value and on the terms and conditions established
 7 by the court.

8 (c) If the broker appointed under subsection (b) obtains within
 9 a reasonable time an offer to purchase the property for at least the
 10 determination of value:

11 (1) the broker shall comply with the reporting requirements
 12 under section 18 of this chapter; and

13 (2) the sale may be completed in accordance with state law
 14 other than this chapter.

15 (d) If the broker appointed under subsection (b) does not obtain
 16 within a reasonable time an offer to purchase the property for at
 17 least the determination of value, the court, after a hearing, may:

18 (1) approve the highest outstanding offer, if any;

19 (2) redetermine the value of the property and order that the
 20 property continue to be offered for an additional time; or

21 (3) order that the property be sold by sealed bids or at
 22 auction.

23 (e) If the court orders a sale by sealed bids or auction, the court
 24 shall set the terms and conditions of the sale. If the court orders an
 25 auction, the auction must be conducted pursuant to IC 32-30-10.

26 (f) If a purchaser is entitled to a share of the proceeds of the
 27 sale, the purchaser is entitled to a credit against the price in an
 28 amount equal to the purchaser's share of the proceeds.

29 Sec. 18. (a) A broker appointed under section 17(b) of this
 30 chapter to offer heirs property for open market sale shall file a
 31 report with the court not later than seven (7) days after receiving
 32 an offer to purchase the property for at least the value determined
 33 under section 12 or 17 of this chapter.

34 (b) The report required by subsection (a) must contain the
 35 following information:

36 (1) A description of the property to be sold to each buyer.

37 (2) The name of the buyer.

38 (3) The proposed purchase price.

39 (4) The terms and conditions of the proposed sale, including
 40 the terms of any owner financing.

41 (5) The amounts to be paid to lienholders.

42 (6) A statement of contractual or other arrangements or



1 conditions of the broker's commission.

2 (7) Any other material facts relevant to the sale.

3 **Sec. 19. In applying and construing this chapter, consideration**
4 **must be given to the need to promote uniformity of the law with**
5 **respect to its subject matter among states that enact it.**

6 **Sec. 20. This chapter:**

7 (1) modifies, limits, and supersedes the Electronic Signatures
8 in Global and National Commerce Act, 15 U.S.C. 7001 et seq.;
9 but

10 (2) does not:

11 (A) modify, limit, or supersede Section 101(c) of that act;
12 or

13 (B) authorize electronic delivery of any of the notices
14 described in Section 103(b) of the Electronic Signatures in
15 Global and National Commerce Act, 15 U.S.C. 7003(b).

