

SENATE BILL NO. 207

INTRODUCED BY K. VAN DYK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY PARTITION LAWS;
5 ADOPTING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; REQUIRING A COURT TO DETERMINE
6 WHETHER PROPERTY TO BE PARTITIONED IS HEIRS PROPERTY; REQUIRING HEIRS PROPERTY TO
7 BE PARTITIONED UNDER THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; PROVIDING FOR
8 INCONSISTENCIES IN EXISTING PARTITION LAWS TO BE RESOLVED IN FAVOR OF THE UNIFORM LAW;
9 PROVIDING FOR NOTICE BY PUBLICATION AND POSTING; IMPOSING CERTAIN CONDITIONS ON
10 REFEREES APPOINTED BY THE COURT; PROVIDING PROCEDURES FOR DETERMINING THE VALUE OF
11 HEIRS PROPERTY; PROVIDING A PROCEDURE FOR COTENANT BUYOUTS; PROVIDING PARTITION
12 ALTERNATIVES; PROVIDING CONSIDERATIONS FOR PARTITIONS IN KIND; PROVIDING PROCEDURES
13 FOR OPEN-MARKET SALE, SEALED BIDS, OR AUCTIONS; PROVIDING FOR UNIFORMITY OF
14 APPLICATION AND CONSTRUCTION; ADDRESSING CERTAIN FEDERAL ACTS; AND PROVIDING AN
15 IMMEDIATE EFFECTIVE DATE."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Uniform Partition
20 of Heirs Property Act".

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22 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13], the following definitions
23 apply:

24 (1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of
25 ascent from the other individual.

26 (2) "Collateral" means an individual who is related to another individual under the law of intestate
27 succession of this state but who is not the other individual's ascendant or descendant.

28 (3) "Descendant" means an individual who follows another individual in lineage, in the direct line of
29 descent from the other individual.

30 (4) "Determination of value" means a court order determining the fair market value of heirs property

1 under [section 6 or 10] or adopting the valuation of the property agreed to by all cotenants.

2 (5) "Heirs property" means real property held in tenancy in common that satisfies all of the following
3 requirements as of the filing of a partition action:

4 (a) there is no agreement in a record binding all the cotenants that governs the partition of the property;

5 (b) one or more of the cotenants acquired title from a relative, whether living or deceased; and

6 (c) any of the following applies:

7 (i) 20% or more of the interests are held by cotenants who are relatives;

8 (ii) 20% or more of the interests are held by an individual who acquired title from a relative, whether living
9 or deceased; or

10 (iii) 20% or more of the cotenants are relatives.

11 (6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed
12 bids, or open-market sale conducted under [section 10].

13 (7) "Partition in kind" means the division of heirs property into physically distinct and separately titled
14 parcels.

15 (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic
16 or other medium and is retrievable in perceivable form.

17 (9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another
18 individual by blood, marriage, adoption, or law of this state other than [sections 1 through 13].

19
20 **NEW SECTION. Section 3. Applicability -- relation to other laws.** (1) [Sections 1 through 13] apply
21 to partition actions filed on or after [the effective date of this act].

22 (2) In an action to partition real property under Title 70, chapter 29, parts 1 through 3, the court shall
23 determine whether the property is heirs property. If the court determines that the property is heirs property, the
24 property must be partitioned under [sections 1 through 13] unless all of the cotenants otherwise agree in a record.

25 (3) [Sections 1 through 13] supplement Title 70, chapter 29, parts 1 through 3, and, if an action is
26 governed by [sections 1 through 13], replace provisions of Title 70, chapter 29, parts 1 through 3, that are
27 inconsistent with [sections 1 through 13].

28
29 **NEW SECTION. Section 4. Service -- notice by posting.** (1) [Sections 1 through 13] do not limit or
30 affect the method by which service of a complaint in a partition action may be made.

1 (2) If the plaintiff in a partition action seeks notice by publication and the court determines that the
2 property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post and
3 maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign
4 must state that the action has commenced and identify the name and address of the court and the common
5 designation by which the property is known. The court may require the plaintiff to publish on the sign the name
6 of the plaintiff and the known defendants.

7
8 NEW SECTION. **Section 5. Referees.** If the court appoints referees pursuant to 70-29-202, each
9 referee, in addition to the requirements and disqualifications applicable to referees in Title 70, chapter 29, part
10 2, must be disinterested and impartial and not a party to or a participant in the action.

11
12 NEW SECTION. **Section 6. Determination of value.** (1) Except as otherwise provided in subsections
13 (2) and (3), if the court determines that the property that is the subject of a partition action is heirs property, the
14 court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (4).

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

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

20 (4) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed
21 in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate.
22 On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

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

25 (a) the appraised fair market value of the property;

26 (b) that the appraisal is available at the clerk's office; and

27 (c) that a party may file with the court an objection to the appraisal, not later than 30 days after the notice
28 is sent, stating the grounds for the objection.

29 (6) If an appraisal is filed with the court pursuant to subsection (4), the court shall conduct a hearing to
30 determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal

1 is sent to each party under subsection (5), whether or not an objection to the appraisal is filed under subsection
2 (5)(c). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by
3 a party.

4 (7) After a hearing under subsection (6), but before considering the merits of the partition action, the
5 court shall determine the fair market value of the property and send notice to the parties of the value.

6

7 **NEW SECTION. Section 7. Buyout by cotenant.** (1) If any cotenant requested partition by sale, after
8 the determination of value under [section 6], the court shall send notice to the parties that any cotenant except
9 a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by
10 sale.

11 (2) Not later than 45 days after the notice is sent under subsection (1), any cotenant except a cotenant
12 that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants
13 that requested partition by sale.

14 (3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value
15 of the entire parcel determined under [section 6] multiplied by the cotenant's fractional ownership of the entire
16 parcel.

17 (4) After expiration of the period in subsection (2), the following rules apply:

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

20 (b) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by
21 sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing
22 cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of
23 all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each
24 electing cotenant.

25 (c) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court
26 shall send notice to all the parties of that fact and resolve the partition action under [sections 8(1) and (2)].

27 (5) If the court sends notice to the parties under subsection (4)(a) or (b), the court shall set a date, not
28 sooner than 60 days after the date the notice was sent, by which electing cotenants shall pay their apportioned
29 price into the court. After this date, the following rules apply:

30 (a) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order

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

3 (b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action
4 under [sections 8(1) and (2)] as if the interests of the cotenants that requested partition by sale were not
5 purchased.

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

9 (6) Not later than 20 days after the court gives notice pursuant to subsection (5)(c), any cotenant that
10 paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day
11 period, the following rules apply:

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

15 (b) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition
16 action under [sections 8(1) and (2)] as if the interests of the cotenants that requested partition by sale were not
17 purchased.

18 (c) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion
19 the remaining interest among those paying cotenants, based on each paying cotenant's original fractional
20 ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire
21 price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests,
22 disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held
23 by the court.

24 (7) Not later than 45 days after the court sends notice to the parties pursuant to subsection (1), any
25 cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the
26 pending action of the interests of cotenants named as defendants and served with the complaint but that did not
27 appear in the action.

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

1 (a) a sale authorized under this subsection may occur only after the purchase prices for all interests
2 subject to sale under subsections (1) through (6) have been paid into court and those interests have been
3 reallocated among the cotenants as provided in those subsections; and

4 (b) the purchase price for the interest of a nonappearing cotenant is based on the court's determination
5 of value under [section 6].
6

7 **NEW SECTION. Section 8. Partition alternatives.** (1) If all the interests of all cotenants that requested
8 partition by sale are not purchased by other cotenants pursuant to [section 7], or if after conclusion of the buyout
9 under [section 7], a cotenant remains that has requested partition in kind, the court shall order partition in kind
10 unless the court, after consideration of the factors listed in [section 9], finds that partition in kind will result in great
11 prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve
12 a request by two or more parties to have their individual interests aggregated.

13 (2) If the court does not order partition in kind under subsection (1), the court shall order partition by sale
14 pursuant to [section 10] or, if no cotenant requested partition by sale, the court shall dismiss the action.

15 (3) If the court orders partition in kind pursuant to subsection (1), the court may require that one or more
16 cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the
17 in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional
18 interests held.

19 (4) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown,
20 unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to [section 7], a
21 part of the property representing the combined interests of these cotenants as determined by the court and this
22 part of the property must remain undivided.
23

24 **NEW SECTION. Section 9. Partition in kind -- considerations.** (1) In determining under [section 8(1)]
25 whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the
26 following:

27 (a) whether the heirs property practicably can be divided among the cotenants;

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

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

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

6 (e) the lawful use being made of the property by a cotenant and the degree to which the cotenant would
7 be harmed if the cotenant could not continue the same use of the property;

8 (f) the degree to which the cotenants have contributed their pro rata share of the property taxes,
9 insurance, and other expenses associated with maintaining ownership of the property or have contributed to the
10 physical improvement, maintenance, or upkeep of the property; and

11 (g) any other relevant factor.

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

14
15 **NEW SECTION. Section 10. Open market sale -- sealed bids -- auction.** (1) If the court orders a sale
16 of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an
17 auction would be more economically advantageous and in the best interest of the cotenants as a group.

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

24 (3) If the broker appointed under subsection (2) obtains within a reasonable time an offer to purchase
25 the property for at least the determination of value:

26 (a) the broker shall comply with the reporting requirements in [section 11]; and

27 (b) the sale may be completed in accordance with state law other than [sections 1 through 13].

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

30 (a) approve the highest outstanding offer, if any;

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

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

4 (5) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the
5 sale. If the court orders an auction, the auction must be conducted under 70-29-301.

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

8

9 **NEW SECTION. Section 11. Report of open-market sale.** (1) Unless required to do so within a shorter
10 time by any other law of this state, a broker appointed under [section 10(2)] to offer heirs property for open-market
11 sale shall file a report with the court not later than 7 days after receiving an offer to purchase the property for at
12 least the value determined under [section 6 or 10].

13 (2) The report required by subsection (1) must contain the following information:

14 (a) a description of the property to be sold to each buyer;

15 (b) the name of each buyer;

16 (c) the proposed purchase price;

17 (d) the terms and conditions of the proposed sale, including the terms of any owner financing;

18 (e) the amounts to be paid to lienholders;

19 (f) a statement of contractual or other arrangements or conditions of the broker's commission; and

20 (g) other material facts relevant to the sale.

21

22 **NEW SECTION. Section 12. Uniformity of application and construction.** In applying and construing
23 [sections 1 through 13], consideration must be given to the need to promote uniformity of the law with respect to
24 its subject matter among states that enact it.

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26 **NEW SECTION. Section 13. Relation to Electronic Signatures in Global and National Commerce**
27 **Act.** [Sections 1 through 13] modify, limit, and supersede the Electronic Signatures in Global and National
28 Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15
29 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15
30 U.S.C. 7003(b).

