

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 708

Introduced by Brandt, 32.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to decedents' estates; to adopt the Uniform
- 2 Partition of Heirs Property Act; and to provide for applicability
- 3 and construction.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known and may be
2 cited as the Uniform Partition of Heirs Property Act.

3 Sec. 2. In the Uniform Partition of Heirs Property Act:

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

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

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

11 (4) Determination of value means a court order determining the fair
12 market value of heirs property under section 6 or 10 of this act or
13 adopting the valuation of the property agreed to by all cotenants.

14 (5) Heirs property means real property held in tenancy in common
15 which satisfies all of the following requirements as of the filing of a
16 partition action:

17 (A) there is no agreement in a record binding all the cotenants
18 which governs the partition of the property;

19 (B) one or more of the cotenants acquired title from a relative,
20 whether living or deceased; and

21 (C) Any of the following applies:

22 (i) twenty percent or more of the interests are held by cotenants
23 who are relatives;

24 (ii) twenty percent or more of the interests are held by an
25 individual who acquired title from a relative, whether living or
26 deceased; or

27 (iii) twenty percent or more of the cotenants are relatives.

28 (6) Partition by sale means a court-ordered sale of the entire heirs
29 property, whether by auction, sealed bids, or open-market sale conducted
30 under section 10 of this act.

31 (7) Partition in kind means the division of heirs property into

1 physically distinct and separately titled parcels.

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

5 (9) Relative means an ascendant, descendant, or collateral or an
6 individual otherwise related to another individual by blood, marriage,
7 adoption, or law of this state other than the act.

8 Sec. 3. (a) The Uniform Partition of Heirs Property Act applies to
9 partition actions filed on or after the effective date of this act.

10 (b) In an action to partition real property under sections 25-2170
11 to 25-21,111 the court shall determine whether the property is heirs
12 property. If the court determines that the property is heirs property,
13 the property must be partitioned under the act unless all of the
14 cotenants otherwise agree in a record.

15 (c) The act supplements sections 25-2170 to 25-21,111 and, if an
16 action is governed by the act, replaces provisions of such sections that
17 are inconsistent with the act.

18 Sec. 4. (a) The Uniform Partition of Heirs Property Act does not
19 limit or affect the method by which service of a complaint in a partition
20 action may be made.

21 (b) If the plaintiff in a partition action seeks an order of notice
22 by publication and the court determines that the property may be heirs
23 property, the plaintiff, not later than ten days after the court's
24 determination, shall post and maintain while the action is pending a
25 conspicuous sign on the property that is the subject of the action. The
26 sign must state that the action has commenced and identify the name and
27 address of the court and the common designation by which the property is
28 known. The court may require the plaintiff to publish on the sign the
29 name of the plaintiff and the known defendants.

30 Sec. 5. If the court appoints referees pursuant to sections 25-2170
31 to 25-21,111, each referee, in addition to the requirements and

1 disqualifications applicable to referees in such sections, must be
2 disinterested and impartial and not a party to or a participant in the
3 action.

4 Sec. 6. (a) Except as otherwise provided in subsections (b) and (c)
5 of this section, if the court determines that the property that is the
6 subject of a partition action is heirs property, the court shall
7 determine the fair market value of the property by ordering an appraisal
8 pursuant to subsection (d) of this section.

9 (b) If all cotenants have agreed to the value of the property or to
10 another method of valuation, the court shall adopt that value or the
11 value produced by the agreed method of valuation.

12 (c) If the court determines that the evidentiary value of an
13 appraisal is outweighed by the cost of the appraisal, the court, after an
14 evidentiary hearing, shall determine the fair market value of the
15 property and send notice to the parties of the value.

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

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

24 (1) the appraised fair market value of the property;

25 (2) that the appraisal is available at the clerk's office; and

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

29 (f) If an appraisal is filed with the court pursuant to subsection
30 (d) of this section, the court shall conduct a hearing to determine the
31 fair market value of the property not sooner than thirty days after a

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

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

10 Sec. 7. (a) If any cotenant requested partition by sale, after the
11 determination of value under section 6 of this act, the court shall send
12 notice to the parties that any cotenant except a cotenant that requested
13 partition by sale may buy all the interests of the cotenants that
14 requested partition by sale.

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

20 (c) The purchase price for each of the interests of a cotenant that
21 requested partition by sale is the value of the entire parcel determined
22 under section 6 of this act multiplied by the cotenant's fractional
23 ownership of the entire parcel.

24 (d) After expiration of the period in subsection (b) of this
25 section, the following rules apply:

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

29 (2) If more than one cotenant elects to buy all the interests of the
30 cotenants that requested partition by sale, the court shall allocate the
31 right to buy those interests among the electing cotenants based on each

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

5 (3) If no cotenant elects to buy all the interests of the cotenants
6 that requested partition by sale, the court shall send notice to all the
7 parties of that fact and resolve the partition action under subsections
8 (a) and (b) of section 8 of this act.

9 (e) If the court sends notice to the parties under subdivision (d)
10 (1) or (2) of this section, the court shall set a date, not sooner than
11 sixty days after the date the notice was sent, by which electing
12 cotenants must pay their apportioned price into the court. After this
13 date, the following rules apply:

14 (1) If all electing cotenants timely pay their apportioned price
15 into court, the court shall issue an order reallocating all the interests
16 of the cotenants and disburse the amounts held by the court to the
17 persons entitled to them.

18 (2) If no electing cotenant timely pays its apportioned price, the
19 court shall resolve the partition action under subsections (a) and (b) of
20 section 8 of this act as if the interests of the cotenants that requested
21 partition by sale were not purchased.

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

26 (f) Not later than twenty days after the court gives notice pursuant
27 to subdivision (e)(3) of this section, any cotenant that paid may elect
28 to purchase all of the remaining interest by paying the entire price into
29 the court. After the twenty-day period, the following rules apply:

30 (1) If only one cotenant pays the entire price for the remaining
31 interest, the court shall issue an order reallocating the remaining

1 interest to that cotenant. The court shall issue promptly an order
2 reallocating the interests of all of the cotenants and disburse the
3 amounts held by it to the persons entitled to them.

4 (2) If no cotenant pays the entire price for the remaining interest,
5 the court shall resolve the partition action under subsections (a) and
6 (b) of section 8 of this act as if the interests of the cotenants that
7 requested partition by sale were not purchased.

8 (3) If more than one cotenant pays the entire price for the
9 remaining interest, the court shall reapportion the remaining interest
10 among those paying cotenants, based on each paying cotenant's original
11 fractional ownership of the entire parcel divided by the total original
12 fractional ownership of all cotenants that paid the entire price for the
13 remaining interest. The court shall issue promptly an order reallocating
14 all of the cotenants' interests, disburse the amounts held by it to the
15 persons entitled to them, and promptly refund any excess payment held by
16 the court.

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

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

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

1 (2) the purchase price for the interest of a nonappearing cotenant
2 is based on the court's determination of value under section 6 of this
3 act.

4 Sec. 8. (a) If all the interests of all cotenants that requested
5 partition by sale are not purchased by other cotenants pursuant to
6 section 7 of this act, or if after conclusion of the buyout under section
7 7 of this act, a cotenant remains that has requested partition in kind,
8 the court shall order partition in kind unless the court, after
9 consideration of the factors listed in section 9 of this act, finds that
10 partition in kind will result in manifest prejudice to the cotenants as a
11 group. In considering whether to order partition in kind, the court shall
12 approve a request by two or more parties to have their individual
13 interests aggregated.

14 (b) If the court does not order partition in kind under subsection
15 (a) of this section, the court shall order partition by sale pursuant to
16 section 10 of this act or, if no cotenant requested partition by sale,
17 the court shall dismiss the action.

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

24 (d) If the court orders partition in kind, the court shall allocate
25 to the cotenants that are unknown, unlocatable, or the subject of a
26 default judgment, if their interests were not bought out pursuant to
27 section 7 of this act, a part of the property representing the combined
28 interests of these cotenants as determined by the court and this part of
29 the property shall remain undivided.

30 Sec. 9. (a) In determining under subsection (a) of section 8 of
31 this act whether partition in kind would result in manifest prejudice to

1 the cotenants as a group, the court shall consider the following:

2 (1) whether the heirs property practicably can be divided among the
3 cotenants;

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

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

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

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

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

23 (7) any other relevant factor.

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

27 Sec. 10. (a) If the court orders a sale of heirs property, the sale
28 must be an open-market sale unless the court finds that a sale by sealed
29 bids or an auction would be more economically advantageous and in the
30 best interest of the cotenants as a group.

31 (b) If the court orders an open-market sale and the parties, not

1 later than ten days after the entry of the order, agree on a real estate
2 broker licensed in this state to offer the property for sale, the court
3 shall appoint the broker and establish a reasonable commission. If the
4 parties do not agree on a broker, the court shall appoint a disinterested
5 real estate broker licensed in this state to offer the property for sale
6 and shall establish a reasonable commission. The broker shall offer the
7 property for sale in a commercially reasonable manner at a price no lower
8 than the determination of value and on the terms and conditions
9 established by the court.

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

13 (1) the broker shall comply with the reporting requirements in
14 section 11 of this act; and

15 (2) the sale may be completed in accordance with state law other
16 than the Uniform Partition of Heirs Property Act.

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

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

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

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

25 (e) If the court orders a sale by sealed bids or an auction, the
26 court shall set terms and conditions of the sale. If the court orders an
27 auction, the auction must be conducted under sections 25-2170 to
28 25-21,111.

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

1 Sec. 11. (a) Unless required to do so within a shorter time by
2 sections 25-2170 to 25-21,111, a broker appointed under subsection (b) of
3 section 10 of this act to offer heirs property for open-market sale shall
4 file a report with the court not later than seven days after receiving an
5 offer to purchase the property for at least the value determined under
6 section 6 or 10 of this act.

7 (b) The report required by subsection (a) of this section must
8 contain the following information:

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

10 (2) the name of each buyer;

11 (3) the proposed purchase price;

12 (4) the terms and conditions of the proposed sale, including the
13 terms of any owner financing;

14 (5) the amounts to be paid to lienholders;

15 (6) a statement of contractual or other arrangements or conditions
16 of the broker's commission; and

17 (7) other material facts relevant to the sale.

18 Sec. 12. In applying and construing this uniform act, consideration
19 must be given to the need to promote uniformity of the law with respect
20 to its subject matter among states that enact it.

21 Sec. 13. The Uniform Partition of Heirs Property Act modifies,
22 limits, and supersedes the Electronic Signatures in Global and National
23 Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or
24 supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize
25 electronic delivery of any of the notices described in section 103(b) of
26 that act, 15 U.S.C. 7003(b).