

HOUSE BILL No. 2356

By Committee on Judiciary

2-11

1 AN ACT concerning civil actions and civil procedure; relating to partition;
2 prescribing procedures and requirements for partition of certain real
3 property; enacting the uniform partition of heirs property act.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through 13, and amendments thereto, shall be
7 known and may be cited as the uniform partition of heirs property act.

8 Sec. 2. As used in the uniform partition of heirs property act:

9 (a) "Ascendant" means an individual who precedes another individual
10 in lineage, in the direct line of ascent from the other individual.

11 (b) "Collateral" means an individual who is related to another
12 individual under the law of intestate succession of this state, but who is not
13 the other individual's ascendant or descendant.

14 (c) "Descendant" means an individual who follows another individual
15 in lineage, in the direct line of descent from the other individual.

16 (d) "Determination of value" means a court order determining the fair
17 market value of heirs property under section 6 or 10, and amendments
18 thereto, or adopting the valuation of the property agreed to by all co-
19 tenants.

20 (e) "Heirs property" means real property held in tenancy in common
21 that satisfies all of the following requirements as of the filing of a partition
22 action:

23 (1) There is no agreement in a record binding all the co-tenants that
24 governs the partition of the property;

25 (2) one or more of the co-tenants acquired title from a relative,
26 whether living or deceased; and

27 (3) any of the following applies:

28 (A) 20% or more of the interests are held by co-tenants who are
29 relatives;

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

32 (C) 20% or more of the co-tenants are relatives.

33 (f) "Partition by sale" means a court-ordered sale of the entire heirs
34 property, whether by auction, sealed bids or open-market sale conducted
35 under section 10, and amendments thereto.

36 (g) "Partition in kind" means the division of heirs property into

1 physically distinct and separately titled parcels.

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

5 (i) "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 uniform partition of heirs
8 property act.

9 Sec. 3. (a) The uniform partition of heirs property act applies to
10 partition actions filed on or after July 1, 2021.

11 (b) In an action to partition real property under K.S.A. 60-1003, and
12 amendments thereto, the court shall determine whether the property is
13 heirs property. If the court determines that the property is heirs property,
14 the property must be partitioned under the uniform partition of heirs
15 property act, unless all of the co-tenants otherwise agree in a record.

16 (c) The uniform partition of heirs property act supplements K.S.A.
17 60-1003, and amendments thereto, and, if an action is governed by the act,
18 replaces provisions of K.S.A. 60-1003, and amendments thereto, that are
19 inconsistent with the act.

20 Sec. 4. (a) The uniform partition of heirs property act does not limit
21 or affect the method by which service of a complaint in a partition action
22 may be made.

23 (b) If the plaintiff in a partition action seeks an order of notice by
24 publication, and the court determines that the property may be heirs
25 property, the plaintiff, not later than 10 days after the court's determination,
26 shall post a conspicuous sign on the property that is the subject of the
27 action and shall maintain the sign while the action is pending. The sign
28 must state that the action has commenced and identify the name and
29 address of the court and the common designation by which the property is
30 known. The court may require the plaintiff to publish on the sign the name
31 of the plaintiff and the known defendants.

32 Sec. 5. If the court appoints commissioners pursuant to K.S.A. 60-
33 1003, and amendments thereto, each commissioner, in addition to the
34 requirements and disqualifications applicable to commissioners in K.S.A.
35 60-1003, and amendments thereto, must be disinterested and impartial and
36 not a party to or a participant in the action.

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

41 (b) If all co-tenants have agreed to the value of the property or to
42 another method of valuation, the court shall adopt that value or the value
43 produced by the agreed method of valuation.

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

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

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

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

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

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

18 (f) If an appraisal is filed with the court pursuant to subsection (d),
19 the court shall conduct a hearing to determine the fair market value of the
20 property not sooner than 30 days after a copy of the notice of the appraisal
21 is sent to each party under subsection (e), whether or not an objection to
22 the appraisal is filed under subsection (e)(3). In addition to the court-
23 ordered appraisal, the court may consider any other evidence of value
24 offered by a party.

25 (g) After a hearing under subsection (f), but before considering the
26 merits of the partition action, the court shall determine the fair market
27 value of the property and send notice to the parties of the value.

28 Sec. 7. (a) If any co-tenant requested partition by sale, after the
29 determination of value under section 6, and amendments thereto, the court
30 shall send notice to the parties that any co-tenant, except a co-tenant that
31 requested partition by sale, may buy all the interests of the co-tenants that
32 requested partition by sale.

33 (b) Not later than 45 days after the notice is sent under subsection (a),
34 any co-tenant, except a co-tenant that requested partition by sale, may give
35 notice to the court that it elects to buy all the interests of the co-tenants that
36 requested partition by sale.

37 (c) The purchase price for each of the interests of a co-tenant that
38 requested partition by sale is the value of the entire parcel determined
39 under section 6, and amendments thereto, multiplied by the co-tenant's
40 fractional ownership of the entire parcel.

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

43 (1) If only one co-tenant elects to buy all the interests of the co-

1 tenants that requested partition by sale, the court shall notify all the parties
2 of that fact.

3 (2) If more than one co-tenant elects to buy all the interests of the co-
4 tenants that requested partition by sale, the court shall allocate the right to
5 buy those interests among the electing co-tenants based on each electing
6 co-tenant's existing fractional ownership of the entire parcel divided by the
7 total existing fractional ownership of all co-tenants electing to buy and
8 send notice to all the parties of that fact and of the price to be paid by each
9 electing co-tenant.

10 (3) If no co-tenant elects to buy all the interests of the co-tenants that
11 requested partition by sale, the court shall send notice to all the parties of
12 that fact and resolve the partition action under section 8(a) and (b), and
13 amendments thereto.

14 (e) If the court sends notice to the parties under subsection (d)(1) or
15 (2), the court shall set a date, not sooner than 60 days after the date the
16 notice was sent, by which electing co-tenants must pay their apportioned
17 price into the court. After this date, the following rules apply:

18 (1) If all electing co-tenants timely pay their apportioned price into
19 court, the court shall issue an order reallocating all the interests of the co-
20 tenants and disburse the amounts held by the court to the persons entitled
21 to them.

22 (2) If no electing co-tenant timely pays its apportioned price, the
23 court shall resolve the partition action under section 8(a) and (b), and
24 amendments thereto, as if the interests of the co-tenants that requested
25 partition by sale were not purchased.

26 (3) If one or more, but not all of the electing co-tenants, fail to pay
27 their apportioned price on time, the court, on motion, shall give notice to
28 the electing co-tenants that paid their apportioned price of the interest
29 remaining and the price for all that interest.

30 (f) Not later than 20 days after the court gives notice pursuant to
31 subsection (e)(3), any co-tenant that paid may elect to purchase all of the
32 remaining interests by paying the entire price into the court. After the 20-
33 day period, the following rules apply:

34 (1) If only one co-tenant pays the entire price for the remaining
35 interests, the court shall issue an order reallocating the remaining interests
36 to that co-tenant. The court shall issue promptly an order reallocating the
37 interests of all of the co-tenants and disburse the amounts held by it to the
38 persons entitled to them.

39 (2) If no co-tenant pays the entire price for the remaining interests,
40 the court shall resolve the partition action under section 8(a) and (b), and
41 amendments thereto, as if the interests of the co-tenants that requested
42 partition by sale were not purchased.

43 (3) If more than one co-tenant pays the entire price for the remaining

1 interests, the court shall reapportion the remaining interests among those
2 paying co-tenants, based on each paying co-tenant's original fractional
3 ownership of the entire parcel divided by the total original fractional
4 ownership of all co-tenants that paid the entire price for the remaining
5 interests. The court shall issue promptly an order reallocating all of the co-
6 tenants' interests, disburse the amounts held by it to the persons entitled to
7 them and promptly refund any excess payment held by the court.

8 (g) Not later than 45 days after the court sends notice to the parties
9 pursuant to subsection (a), any co-tenant entitled to buy an interest under
10 this section may request the court to authorize the sale as part of the
11 pending action of the interests of co-tenants named as defendants and
12 served with the complaint but that did not appear in the action.

13 (h) If the court receives a timely request under subsection (g), the
14 court, after hearing, may deny the request or authorize the requested
15 additional sale on such terms as the court determines are fair and
16 reasonable, subject to the following limitations:

17 (1) A sale authorized under this subsection may occur only after the
18 purchase prices for all interests subject to sale under subsections (a)
19 through (f) have been paid into court and those interests have been
20 reallocated among the co-tenants as provided in those subsections; and

21 (2) the purchase price for the interest of a nonappearing co-tenant is
22 based on the court's determination of value under section 6, and
23 amendments thereto.

24 Sec. 8. (a) If all the interests of all co-tenants that requested partition
25 by sale are not purchased by other co-tenants pursuant to section 7, and
26 amendments thereto, or if after conclusion of the buyout under section 7,
27 and amendments thereto, a co-tenant remains that has requested partition
28 in kind, the court shall order partition in kind, unless the court, after
29 consideration of the factors listed in section 9, and amendments thereto,
30 finds that partition in kind will result in manifest prejudice to the co-
31 tenants as a group. In considering whether to order partition in kind, the
32 court shall approve a request by two or more parties to have their
33 individual interests aggregated.

34 (b) If the court does not order partition in kind under subsection (a),
35 the court shall order partition by sale pursuant to section 10, and
36 amendments thereto, or, if no co-tenant requested partition by sale, the
37 court shall dismiss the action.

38 (c) If the court orders partition in kind pursuant to subsection (a), the
39 court may require that one or more co-tenants pay one or more other co-
40 tenants amounts so that the payments, taken together with the value of the
41 in-kind distributions to the co-tenants, will make the partition in kind just
42 and proportionate in value to the fractional interests held.

43 (d) If the court orders partition in kind, the court shall allocate to the

1 co-tenants that are unknown, unlocatable, or the subject of a default
2 judgment, if their interests were not bought out pursuant to section 7, and
3 amendments thereto, a part of the property representing the combined
4 interests of these co-tenants as determined by the court and this part of the
5 property shall remain undivided.

6 Sec. 9. (a) In determining under section 8(a), and amendments
7 thereto, whether partition in kind would result in manifest prejudice to the
8 co-tenants as a group, the court shall consider the following:

9 (1) Whether the heirs property practicably can be divided among the
10 co-tenants;

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

16 (3) evidence of the collective duration of ownership or possession of
17 the property by a co-tenant and one or more predecessors in title or
18 predecessors in possession to the co-tenant who are or were relatives of the
19 co-tenant or each other;

20 (4) a co-tenant's sentimental attachment to the property, including any
21 attachment arising because the property has ancestral or other unique or
22 special value to the co-tenant;

23 (5) the lawful use being made of the property by a co-tenant and the
24 degree to which the co-tenant would be harmed if the co-tenant could not
25 continue the same use of the property;

26 (6) the degree to which the co-tenants have contributed their pro rata
27 share of the property taxes, insurance and other expenses associated with
28 maintaining ownership of the property or have contributed to the physical
29 improvement, maintenance or upkeep of the property; and

30 (7) any other relevant factors.

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

34 Sec. 10. (a) If the court orders a sale of heirs property, the sale must
35 be an open-market sale, unless the court finds that a sale by sealed bids or
36 an auction would be more economically advantageous and in the best
37 interest of the co-tenants as a group.

38 (b) If the court orders an open-market sale and the parties, not later
39 than 10 days after the entry of the order, agree on a real estate broker
40 licensed in this state to offer the property for sale, the court shall appoint
41 the broker and establish a reasonable commission. If the parties do not
42 agree on a broker, the court shall appoint a disinterested real estate broker
43 licensed in this state to offer the property for sale and shall establish a

1 reasonable commission. The broker shall offer the property for sale in a
 2 commercially reasonable manner at a price no lower than the
 3 determination of value and on the terms and conditions established by the
 4 court.

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

8 (1) The broker shall comply with the reporting requirements in
 9 section 11, and amendments thereto; and

10 (2) the sale may be completed in accordance with state law other than
 11 the uniform partition of heirs property act.

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

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

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

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

19 (e) If the court orders a sale by sealed bids or an auction, the court
 20 shall set terms and conditions of the sale. If the court orders an auction, the
 21 auction must be conducted under K.S.A. 60-1003, and amendments
 22 thereto.

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

26 Sec. 11. (a) Unless required to do so within a shorter time by K.S.A.
 27 60-1003, and amendments thereto, a broker appointed under section 10(b),
 28 and amendments thereto, to offer heirs property for open-market sale shall
 29 file a report with the court not later than seven days after receiving an offer
 30 to purchase the property for at least the value determined under section 6
 31 or 10, and amendments thereto.

32 (b) The report required by subsection (a) must contain the following
 33 information:

34 (1) A description of the property to be sold to each buyer;

35 (2) the name of each buyer;

36 (3) the proposed purchase price;

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

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

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

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

43 Sec. 12. In applying and construing this uniform act, consideration

1 must be given to the need to promote uniformity of the law with respect to
2 its subject matter among states that enact it.

3 Sec. 13. The uniform partition of heirs property act modifies, limits
4 and supersedes the electronic signatures in global and national commerce
5 act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede
6 section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic
7 delivery of any of the notices described in section 103(b) of that act, 15
8 U.S.C. § 7003(b).

9 Sec. 14. This act shall take effect and be in force from and after its
10 publication in the statute book.