

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 410

BY SENATOR TRUMP

[Introduced January 27, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §37-4A-1, §37-4A-2, §37-4A-3, §37-4A-4, §37-4A-5, §37-4A-6, §37-4A-7,
 3 §37-4A-8, §37-4A-9, §37-4A-10, §37-4A-11, §37-4A-12 and §37-4A-13, all relating to
 4 creating Uniform Partition Of Heirs Property Act; providing short title and definitions;
 5 providing that this article applies to partition actions filed on or after the effective date of
 6 this article; providing court shall determine whether certain property is heirs property;
 7 requiring posting of notice of legal action on property subject to partition; appointing
 8 commissioners; determining value of property; procedure for cotenant buyout of interests;
 9 alternative to partition; providing considerations for partition in kind and whether partition
 10 would result in great prejudice to the cotenants as a group; whether sale should be an
 11 open-market sale, by sealed bids, or by auction; requiring report of open-market sale;
 12 requiring uniformity of application and construction of this article; and modifying, limiting
 13 and superseding the relation of this article to Electronic Signatures in the Global and
 14 National Commerce Act.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §37-4A-1, §37-4A-2, §37-4A-3, §37-4A-4, §37-4A-5, §37-4A-6, §37-4A-7, §37-
 3 4A-8, §37-4A-9, §37-4A-10, §37-4A-11, §37-4A-12 and §37-4A-13, all to read as follows:

ARTICLE 4A. UNIFORM PARTITION OF HEIRS PROPERTY ACT.

§37-4A-1. Short title.

1 This article may be cited as the Uniform Partition of Heirs Property Act.

§37-4A-2. Definitions.

1 As used in this article:

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

4 (b) "Collateral" means an individual who is related to another individual under the law of

5 intestate succession of this state but who is not the other individual's ascendant or descendant.

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

8 (d) "Determination of value" means a court order determining the fair market value of heirs
9 property under sections six or ten of this article or adopting the valuation of the property agreed
10 to by all cotenants.

11 (e) "Heirs property" means real property held in tenancy in common which satisfies all of
12 the following requirements as of the filing of a partition action:

13 (1) There is no agreement in a record binding all the cotenants which governs the partition
14 of the property;

15 (2) One or more of the cotenants acquired title from a relative, whether living or deceased;
16 and

17 (3) Any of the following applies:

18 (A) Twenty percent or more of the interests are held by cotenants who are relatives;

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

21 (C) Twenty percent or more of the cotenants are relatives.

22 (f) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by
23 auction, sealed bids, or open-market sale conducted under section ten of this article.

24 (g) "Partition in kind" means the division of heirs property into physically distinct and
25 separately titled parcels.

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

28 (i) "Relative" means an ascendant, descendant, or collateral or an individual otherwise
29 related to another individual by blood, marriage, adoption, or law of this state other than this
30 article.

§37-4A-3. Applicability; relation to other law.

1 (a) This article applies to partition actions filed on or after the effective date of this article.

2 (b) In an action to partition real property under article four of this chapter, the court shall
3 determine whether the property is heirs property. If the court determines that the property is
4 heirs property, the property must be partitioned under this article unless all of the cotenants
5 otherwise agree in a record.

6 (c) This article supplements article four of this chapter and, if an action is governed by this
7 article, replaces provisions of article four of this chapter that are inconsistent with this article.

§37-4A-4. Service; notice by posting.

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

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

§37-4A-5. Commissioners.

1 If the court appoints commissioners pursuant to article four of this chapter, each
2 commissioner, in addition to the requirements and disqualifications applicable to commissioners
3 in article four of this chapter, must be disinterested and impartial and not a party to or a participant
4 in the action.

§37-4A-6. Determination of value.

1 (a) Except as otherwise provided in subsections (b) and (c) of this section, if the court
2 determines that the property that is the subject of a partition action is heirs property, the court

3 shall determine the fair market value of the property by ordering an appraisal pursuant to
4 subsection (d) of this section.

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

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

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

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

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

19 (2) That the appraisal is available at the clerk's office; and

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

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

27 (g) After a hearing under subsection (f) of this section, but before considering the merits
28 of the partition action, the court shall determine the fair market value of the property and send

29 notice to the parties of the value.

§37-4A-7. Cotenant buyout.

1 (a) If any cotenant requested partition by sale, after the determination of value under
2 section six of this article, the court shall send notice to the parties that any cotenant except a
3 cotenant that requested partition by sale may buy all the interests of the cotenants that requested
4 partition by sale.

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

8 (c) The purchase price for each of the interests of a cotenant that requested partition by
9 sale is the value of the entire parcel determined under section six of this article multiplied by the
10 cotenant's fractional ownership of the entire parcel.

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

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

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

19 (3) If no cotenant elects to buy all the interests of the cotenants that requested partition by
20 sale, the court shall send notice to all the parties of that fact and resolve the partition action under
21 Section 8(a) and (b).

22 (e) If the court sends notice to the parties under subsection (d) (1) or (2), the court shall
23 set a date, not sooner than sixty days after the date the notice was sent, by which electing
24 cotenants must pay their apportioned price into the court. After this date, the following rules apply:

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

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

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

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

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

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

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

50 (g) Not later than forty-five days after the court sends notice to the parties pursuant to

51 subsection (a) of this section, any cotenant entitled to buy an interest under this section may
52 request the court to authorize the sale as part of the pending action of the interests of cotenants
53 named as defendants and served with the complaint but that did not appear in the action.

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

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

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

§37-4A-8. Partition alternatives.

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

8 (b) If the court does not order partition in kind under subsection (a) of this section, the
9 court shall order partition by sale pursuant to section ten of this article or, if no cotenant requested
10 partition by sale, the court shall dismiss the action.

11 (c) If the court orders partition in kind pursuant to subsection (a) of this section, the court
12 may require that one or more cotenants pay one or more other cotenants amounts so that the
13 payments, taken together with the value of the in-kind distributions to the cotenants, will make the

14 partition in kind just and proportionate in value to the fractional interests held.

15 (d) If the court orders partition in kind, the court shall allocate to the cotenants that are
16 unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out
17 pursuant to section seven of this article, a part of the property representing the combined interests
18 of these cotenants as determined by the court and this part of the property shall remain undivided.

§37-4A-9. Considerations for partition in kind.

1 (a) In determining under section eight (a) of this article whether partition in kind would
2 result in great prejudice to the cotenants as a group, the court shall consider the following:

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

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

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

11 (4) A tenant's sentimental attachment to the property, including any attachment arising
12 because the property has ancestral or other unique or special value to the tenant;

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

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

18 (7) Any other relevant factor.

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

§37-4A-10. Open-market sale, sealed bids, or auction.

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

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

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

13 (1) The broker shall comply with the reporting requirements in section eleven of this article;
14 and

15 (2) The sale may be completed in accordance with state law other than this article.

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

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

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

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

23 (e) If the court orders a sale by sealed bids or an auction, the court shall set terms and
24 conditions of the sale. If the court orders an auction, the auction must be conducted under [insert
25 reference to general partition statute or, if there is none, insert reference to foreclosure sale].

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

§37-4A-11. Report of open-market sale.

1 (a) Unless required to do so within a shorter time by article four of this chapter, a broker
2 appointed under section ten (b) of this article to offer heirs property for open-market sale shall file
3 a report with the court not later than seven days after receiving an offer to purchase the property
4 for at least the value determined under sections six or ten of this article.

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

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

8 (2) The name of each buyer;

9 (3) The proposed purchase price;

10 (4) The terms and conditions of the proposed sale, including the terms of any owner
11 financing;

12 (5) The amounts to be paid to lienholders;

13 (6) A statement of contractual or other arrangements or conditions of the broker's
14 commission; and

15 (7) Other material facts relevant to the sale.

§37-4A-12. Uniformity of application and construction.

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

§37-4A-13. Relation to electronic signatures in global and national commerce act.

1 This article modifies, limits, and supersedes the Electronic Signatures in Global and
2 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede
3 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of
4 the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

NOTE: The purpose of this bill is to create the Uniform Partition of Heirs Property Act. It provides a short title and definitions and states that this article applies to partition actions filed on or after the effective date of this article. The bill provides that in an action to partition real property under article four, chapter thirty-seven of this code, the court shall determine whether the property is heirs property. The bill requires posting of notice of legal action on property subject to partition. It addresses the appointment of commissioners, determination of value of property and the procedure for a cotenant buyout of interests. The bill provides an alternative to partition. It provides considerations for partition in kind and whether partition would result in great prejudice to the cotenants as a group. The bill requires the court to determine whether sale should be an open-market sale, by sealed bids, or by auction. It requires a report of open-market sale. And the bill, as a uniform act, requires uniformity of application and construction of this article and modifies, limits and supersedes the relation of this article to electronic signatures in the Global and National Commerce Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.