

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill 4956

BY DELEGATES SHOTT, LOVEJOY, AND FAST

[Originating in the Committee on the Judiciary;

Reported on February 14, 2020.]

1 A BILL to amend and reenact §37-4-3 of the Code of West Virginia, 1931, as amended, and to
2 amend said code by adding thereto five new sections, designated §37-4-9, §37-4-10, §37-
3 4-11, §37-4-12, and §37-4-13, all relating generally to the partition of real property;
4 providing for allotment or sale of real property and procedures therefore; providing for
5 appointment, duties, and requirements for commissioners for partitions; providing certain
6 relevant factors to be considered in determining whether partition in kind is appropriate;
7 providing for rebuttable presumptions regarding property valuation and partition in kind of
8 severed minerals; providing procedures for courts to follow in determining the fair market
9 value of real property being partitioned; providing for appointment, duties, and
10 requirements for appraisers for partitions; providing for open-market sales, sealed bids, or
11 public auctions of real property being partitioned and procedures and exceptions
12 therefore; providing for appointment, duties, and requirements for real estate brokers for
13 partitions; providing reporting requirements and report contents for open-market sales;
14 providing for a reserve price in open market sales; providing protections from sale for
15 certain specified real property interests.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PARTITION.

§37-4-3. Allotment or sale; procedure for allotment.

1 (a) When partition cannot be conveniently made;
2 (1) ~~the~~ The entire subject may be allotted to any party or parties who will accept it, and
3 pay therefor to the other party or parties such sum of money as his, her or their interest therein
4 may entitle him, her or them to but pursuant to the provisions of §37-9-10; or
5 ~~(2) in any case in which partition cannot be conveniently made, if~~ If the interests of one or
6 more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the
7 entire subject, or allotment of part and sale of the residue, and the interest of the other person or
8 persons so entitled will not be prejudiced thereby, the court, notwithstanding the fact that any of

9 those entitled may be an infant, insane person, or convict, may order such sale, or such sale and
10 allotment, subject to §37-4-9, §37-4-10, §37-4-11, §37-4-12 and §37-4-13 of this article as
11 applicable, and make distribution of the proceeds of sale, according to the respective rights of
12 those entitled, taking care, when there are creditors of any deceased person who was a tenant in
13 common, joint tenant, or coparcener, to have the proceeds of such deceased person's part
14 applied according to the rights of such creditors.

15 (b) Where it clearly appears to the court that partition cannot be conveniently made, the
16 court may order sale without appointing commissioners to make the determination and proceed
17 pursuant to §37-4-10, §37-4-11, §37-4-12 and §37-4-13 of this article as applicable.

18 (c) The court making an order for sale, allotment, or a combination thereof, shall when the
19 dividend of a party exceeds the value of \$300, if such party be an infant, insane person, or convict,
20 require security for the faithful application of the proceeds of his or her interest, in like manner as
21 if the sale were made under article one of this chapter.

22 (d) In the event that allotment shall be made as aforesaid and the person or persons
23 entitled to the proceeds, for any reason, cannot agree upon the value of the subject, the court, or
24 the judge thereof in vacation, shall proceed pursuant to §37-4-9, §37-4-10, §37-4-11, §37-4-12
25 and §37-4-13 of this article as applicable. ~~appoint three disinterested and qualified persons to fix~~
26 ~~the value of the whole subject who, after being duly sworn to make an appraisal of the fair market~~
27 ~~value of the subject, shall within thirty days from the taking of such oath, appraise the subject and~~
28 ~~make and file a written report of their findings in the office of the clerk of the court in which the~~
29 ~~suit is pending. If such appraisers report their disagreement, or fail to file such report within thirty~~
30 ~~days, other appraisers may in like manner be appointed, and so again, from time to time, as often~~
31 ~~as may be necessary. The report of the appraisers when filed, shall be conclusive and binding~~
32 ~~upon all persons having any interest in the subject, unless an objection is filed thereto in said~~
33 ~~clerk's office within thirty days after the date of such report by the appraiser. If objection is made~~
34 ~~to such report, the court, or the judge thereof in vacation, shall take evidence upon the value of~~

35 ~~the subject in the same manner as in other chancery matters, shall find the fair market value of~~
36 ~~the subject and shall decree payment therefor according to the respective rights of those entitled~~
37 ~~thereto as their interest may appear, taking care to protect the rights of creditors as aforesaid in~~
38 ~~this section.~~

39 (e) If any party to the suit refuses or is unable because of any disability, including but not
40 limited to infancy, insanity and conviction of crime, to make, execute and deliver a deed or other
41 instrument transferring title to the subject to the person or persons to whom the subject has been
42 allotted, the court, or the judge thereof in vacation, shall appoint a special commissioner for the
43 purposes of accepting the purchase money from the person or persons to whom the subject has
44 been allotted, making, executing, and delivering thereto a deed or other instrument therefor and
45 distributing such purchase money according to the respective rights of those persons entitled
46 thereto. The special commissioner so appointed shall give bond and be governed in all respects
47 as provided in §55-12-1 of this code.

§37-4-9. Commissioners, duties, relevant factors to partition alternatives, rebuttable presumptions.

1 (a) The court, in its discretion, may appoint three or more commissioners to make an
2 assessment of partition alternatives under this article.

3 (b) If the court appoints commissioners pursuant to this article, each commissioner must
4 be qualified, disinterested, impartial and not a party to or a participant in the action.

5 (c) If the court appoints commissioners under this article to evaluate whether partition in
6 kind would result in prejudice, the commissioners must file a report with the court in an amount of
7 time determined by the court that provides an assessment of whether partition in kind would result
8 in prejudice, and this assessment must be supported by sufficient facts.

9 (d) In determining whether partition in kind would result in prejudice, the court shall
10 consider the following, but may not consider any one factor to be dispositive without weighing the
11 totality of all relevant factors and circumstances:

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

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

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

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

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

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

27 (7) Any and all other relevant factors.

28 (e) In the case of severed minerals, including without limitation, coal, oil and gas, there
29 shall be a rebuttable presumption that the aggregate fair market value of the parcels resulting
30 from the division would be materially less than the value of the property if it were sold as a whole,
31 taking into account the conditions under which a court-ordered sale likely would occur, and
32 therefore partition in kind would result in prejudice to one or more of the parties. The presumption
33 may be rebutted by the other factors in subsection (d) of this section and all other relevant factors.

34 (f) There shall be a rebuttable presumption that severed minerals, including without
35 limitation, coal, oil and gas, cannot be conveniently partitioned in kind and shall only be partitioned
36 by sale unless (1) all the parties to the partition consent to partition in kind, or (2) any person or
37 persons, whose interest will be impacted, timely files a motion or request with the court: *Provided,*

38 That the moving party shall bear the burden of proving that the severed minerals, including coal,
39 oil or gas, can be equitably and conveniently partitioned in kind and such partition in kind will not
40 prejudice any party or prevent the development of the severed minerals. After allowing time for a
41 party to file a response to the motion or request, the court shall rule upon the motion and may
42 appoint commissioners to effectuate such partition in kind if required.

§37-4-10. Determination of value for partitioned property, appraisals.

1 (a) A court shall determine the fair market value of the property, subject to the action, by
2 ordering an appraisal pursuant to this article; unless all parties to the partition action have agreed
3 to the value of the property or to another method of valuation, in which case the court shall adopt
4 that value or the value produced by the agreed method of valuation.

5 (b) If the court determines that the evidentiary value of an appraisal is outweighed by the
6 cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value
7 of the property and send notice to the parties of the value.

8 (c) If the court orders an appraisal, the court shall appoint a qualified, disinterested, and
9 impartial real estate appraiser, licensed in this state, who is not a party to or participant in the
10 action, to determine the fair market value of the property, assuming sole ownership of the estate
11 that is the subject of the action: *Provided*, That in a case of minerals including, without limitation,
12 coal, oil and gas estates, other licensed or certified professionals with relevant experience may
13 be used, including, without limitation, geologists, engineers, landmen, and accountants, if the
14 value of utilizing such professionals outweighs the cost of engaging such professionals. On
15 completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

16 (d) If an appraisal is conducted under this article within 10 days after the appraisal is filed,
17 the court shall send notice to each party with a known address, 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 30 days
21 after the notice is sent, stating the grounds for the objection.

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

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

§37-4-11. Open-market sale, public auctions, sealed bids, real estate brokers.

1 (a) If the court orders a sale of the property, the court shall sell the property by an open-
2 market sale pursuant to this section, unless the court finds that a sale by sealed bids or a public
3 auction would be more economically advantageous and in the best interest of the cotenants as a
4 group.

5 (b) If the court orders an open-market sale and the parties, in an amount of time to be
6 determined by the court, agree on a real estate broker licensed in this state to offer the property
7 for sale, the court shall appoint the broker and establish a reasonable commission. If the parties
8 do not agree on a broker, the court shall appoint a qualified, disinterested, and impartial real estate
9 broker, licensed in this state, who is not a party to or a participant in the action, to offer the property
10 for sale and shall establish a reasonable commission. The broker shall offer the property for sale
11 in a commercially reasonable manner at a price no lower than the determination of value under
12 §37-4-10 of this code and on the terms and conditions established by the court, and report to the
13 court within the time established by the court.

14 (c) If the appointed broker obtains an offer to purchase the property within a reasonable
15 time for at least the determination of value under §37-4-10 of this code, the broker shall comply
16 with the reporting requirements in §37-4-12 of this code and, the sale may be completed in
17 accordance with state law.

18 (d) If the appointed broker does not obtain an offer within a reasonable time to purchase
19 the property for at least the determination of value under §37-4-10 of this code, 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 property continue to be
23 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 court shall set terms and
26 conditions of the sale.

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

§37-4-12. Report of Open-Market Sale.

1 (a) A broker, appointed under §37-4-11 of this code to offer property for open market sale,
2 shall file a report with the court in an amount of time to be determined by the court after receiving
3 an offer or offers to purchase the property for at least the value determined under §37-4-10 of this
4 code.

5 (b) The report must contain the following information:

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

7 (2) The name of each buyer;

8 (3) The proposed purchase price;

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

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

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

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

§37-4-13. Interests protected from partition by sale.

1 Any undivided interest in minerals, including without limitation, coal, oil and gas, which is
2 covered by a valid lease, which was negotiated through reasonable, good faith efforts and entered
3 into prior to the filing of the partition action, shall not be sold or transferred in a partition by sale
4 under this article without the express written consent of the owner of the covered mineral interest,
5 which written consent shall be filed with the court.

NOTE: The purpose of this bill is to enact partition reform by providing for allotment or sale of real property; providing for appointment, duties, and requirements for commissioners, appraisers, and real estate brokers for partitions; providing factors to be considered in determining whether partition in kind is appropriate; providing procedures to be followed in determining the fair market value of property being partitioned; providing for open-market sales, sealed bids, or public auctions of property being partitioned; providing reporting requirements; and providing protections from sale for certain specified interests.

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