

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5407

By Delegates Campbell, Lucas, and Warner

[Introduced February 01, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §37-4-3 of the Code of West Virginia, 1931, as amended, relating to
 2 partition of real property and giving a party to a partition proceeding with more than 50
 3 percent interest in the real property first right of refusal to purchase the entire subject
 4 property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PARTITION.

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

1 When partition cannot be conveniently made, the entire subject may be allotted to any
 2 party or parties who will accept it, and pay therefor to the other party or parties such sum of money
 3 as his or her or their interest therein may entitle him or her or them to; or in any case in which
 4 partition cannot be conveniently made, if the interests of one or more of those who are entitled to
 5 the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and
 6 sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced
 7 thereby, the court, notwithstanding the fact that any of those entitled may be an infant, insane
 8 person, or convict, may order such sale, or such sale and allotment, and make distribution of the
 9 proceeds of sale, according to the respective rights of those entitled, taking care, when there are
 10 creditors of any deceased person who was a tenant in common, joint tenant, or coparcener, to
 11 have the proceeds of ~~such~~ the deceased person's part applied according to the rights of ~~such~~ the
 12 creditors. Notwithstanding any other provision of this article, any party, without allotting or joining
 13 shares or interest with any other party, who possesses a majority interest of more than 50 percent
 14 in real property, as it relates to any and all other parties, without allotment or joining of their shares,
 15 shall have the right of first refusal as to the purchase of the entirety of the real property prior to a
 16 public auction, based upon a court determined value of the property. The majority interest owner
 17 shall also receive a purchase credit up to the percentage of their ownership interest. A majority
 18 interest owner shall also have the right of election as to a partition in-kind, partition by sale, or a
 19 combination thereof. Where it clearly appears to the court that partition cannot be conveniently

20 made, the court may order sale without appointing commissioners.

21 The court making an order for sale shall, when the dividend of a party exceeds the value of
22 \$300, if ~~such~~ the party ~~be~~ is an infant, insane person, or convict, require security for the faithful
23 application of the proceeds of his or her interest, in like manner as if the sale were made under
24 §37-1-1 *et seq.* of this code.

25 ~~In the event that~~ If the allotment ~~shall be~~ is made as aforesaid and the person or persons
26 entitled to the proceeds, for any reason, cannot agree upon the value of the subject, the court, or
27 the judge thereof in vacation, shall appoint three disinterested and qualified persons to fix the
28 value of the whole subject who, after being duly sworn to make an appraisal of the fair market
29 value of the subject, shall within 30 days from the taking of ~~such~~ the oath, appraise the subject and
30 make and file a written report of their findings in the office of the clerk of the court in which the suit
31 is pending. If ~~such~~ the appraisers report their disagreement, or fail to file ~~such~~ the report within 30
32 days, other appraisers may in like manner be appointed, and so again, from time to time, as often
33 as may be necessary. The report of the appraisers when filed, shall be conclusive and binding
34 upon all persons having any interest in the subject, unless an objection is filed thereto in said
35 clerk's office within 30 days after the date of ~~such~~ the report by the appraiser. If objection is made
36 to ~~such~~ the report, the court, or the judge thereof in vacation, shall take evidence upon the value of
37 the subject in the same manner as in other chancery matters, shall find the fair market value of the
38 subject and shall decree payment therefor according to the respective rights of those entitled
39 thereto as their interest may appear, taking care to protect the rights of creditors as aforesaid in
40 this section.

41 If any party to the suit refuses or is unable because of any disability, including but not
42 limited to infancy, insanity and conviction of crime, to make, execute and deliver a deed or other
43 instrument transferring title to the subject to the person or persons to whom the subject has been
44 allotted, the court, or the judge thereof in vacation, shall appoint a special commissioner for the
45 purposes of accepting the purchase money from the person or persons to whom the subject has

46 been allotted, making, executing and delivering thereto a deed or other instrument therefor and
47 distributing ~~such~~ the purchase money according to the respective rights of those persons entitled
48 thereto. The special commissioner so appointed shall give bond and be governed in all respects
49 as provided in §55-12-1 of this code.

NOTE: The purpose of this bill is to give a party to a real property partition proceeding with more than 50 percent interest in the real property first right of refusal to purchase the entire subject property.

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