

SB0092/953722/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 92
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “**Senator Augustine**” and substitute “**Senators Augustine, Hettleman, Sydnor, and West**”; in line 2, strike “Maryland Uniform Partition of Heirs Property Act” and substitute “Real Property – Partition of Property”; strike beginning with “whether” in line 4 down through “determine” in line 5; in lines 7, 8, and 10, in each instance, strike “heirs” and substitute “real”; in line 16, strike “and reenacting, with amendments,”; and in lines 23 and 24, strike “Maryland Uniform Partition of Heirs Property Act” and substitute “Partition of Real Property”.

AMENDMENT NO. 2

On pages 2 through 13, strike in their entirety the lines beginning with line 16 on page 2 through line 29 on page 13, inclusive, and substitute:

“Article – Real Property

[14–107.

(a) A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights. The right to a partition or sale includes the right to a partition or sale of any separate lot or tract of property, and the bill or petition need not pray for a partition of all the lots or tracts.

(b) This section applies regardless of whether any party, plaintiff, or defendant is a minor, disabled, or a nonresident.

(c) A sale and deed made pursuant to an order of the court in the exercise of the power provided in this section is good and sufficient at law to transfer property of the person. A deed executed in exercise of the above power provided in this section shall be executed by the person the court appoints for the purpose.

(d) If any bill or petition is filed under the provisions of this section for the sale of property, any person holding a mortgage, other encumbrance on the property, or an undivided interest in the property may be made a party to the bill, and the property shall be sold free and clear of the mortgage or other encumbrance. However, the rights of a lienor shall be protected in the distribution of the proceeds of the sale.]

SUBTITLE 7. PARTITION OF REAL PROPERTY.

14-701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “DETERMINATION OF VALUE” MEANS A COURT ORDER DETERMINING THE FAIR MARKET VALUE OF PROPERTY UNDER § 14-707 OR § 14-711 OF THIS SUBTITLE OR ADOPTING THE VALUATION OF PROPERTY AGREED TO BY ALL COTENANTS.

(C) “PARTITION BY SALE” MEANS A COURT-ORDERED SALE OF PROPERTY, WHETHER BY AUCTION, SEALED BIDS, OR OPEN-MARKET SALE CONDUCTED UNDER § 14-711 OF THIS SUBTITLE.

(D) “PARTITION IN KIND” MEANS THE DIVISION OF PROPERTY INTO PHYSICALLY DISTINCT AND SEPARATELY TITLED PARCELS.

(E) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

14-702.

(A) REAL PROPERTY SHALL BE PARTITIONED UNDER THIS SUBTITLE UNLESS ALL OF THE COTENANTS AGREE OTHERWISE IN A RECORD.

(B) THE MARYLAND RULES APPLY TO ACTIONS UNDER THIS SUBTITLE, EXCEPT TO THE EXTENT THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS SUBTITLE.

14-703.

IN AN ACTION UNDER THIS SUBTITLE, THE COURT ON ITS OWN MOTION OR ON MOTION OF ANY PARTY MAY ISSUE AN ORDER:

(1) FOR THE APPOINTMENT OF AN ATTORNEY TO PROTECT THE INTEREST OF ANY PARTY TO THE SAME EXTENT AND EFFECT AS PROVIDED UNDER RULE 2-203 OF THE MARYLAND RULES WITH RESPECT TO INDIVIDUALS NOT IN BEING;

(2) TO REQUIRE JOINDER OF ANY ADDITIONAL PARTIES THAT ARE NECESSARY OR PROPER; AND

(3) TO REQUIRE THAT THE PLAINTIFF:

(i) PROCURE A TITLE REPORT SUPPORTED BY AN AFFIDAVIT BY THE PERSON MAKING THE TITLE SEARCH THAT A COMPLETE SEARCH OF THE PUBLIC RECORDS HAS BEEN PERFORMED IN ACCORDANCE WITH

GENERALLY ACCEPTED STANDARDS OF TITLE EXAMINATION FOR THE APPROPRIATE PERIOD AS DETERMINED BY THE COURT, BUT NOT LESS THAN 60 YEARS; AND

(II) DESIGNATE A PLACE WHERE THE TITLE REPORT SHALL BE KEPT FOR INSPECTION, USE, AND COPYING BY THE PARTIES.

14-704.

IN ADDITION TO ANY PERSONS REQUIRED TO BE NAMED AS DEFENDANTS IN AN ACTION UNDER THIS SUBTITLE, THE PLAINTIFF MAY NAME AS DEFENDANTS ALL PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO THE PLAINTIFF'S TITLE, OR ANY CLOUD ON THE PLAINTIFF'S TITLE TO THE PROPERTY.

14-705.

(A) (1) IF, ON AFFIDAVIT OF THE PLAINTIFF, IT APPEARS TO THE SATISFACTION OF THE COURT THAT THE PLAINTIFF HAS USED REASONABLE DILIGENCE TO ASCERTAIN THE IDENTITY AND RESIDENCE OF AND TO SERVE A SUMMONS ON THE PERSONS NAMED AS UNKNOWN DEFENDANTS AND PERSONS JOINED AS TESTATE OR INTESTATE SUCCESSORS OF A PERSON KNOWN OR BELIEVED TO BE DEAD, THE COURT SHALL ORDER SERVICE BY PUBLICATION IN ACCORDANCE WITH RULE 2-122 OF THE MARYLAND RULES AND THE PROVISIONS OF THIS SUBTITLE.

(2) THE ORDER SHALL DIRECT THAT A COPY OF THE SUMMONS, THE COMPLAINT, AND THE ORDER FOR PUBLICATION BE MAILED IMMEDIATELY TO THE PARTY IF THE PARTY'S ADDRESS IS ASCERTAINED BEFORE EXPIRATION OF THE TIME PRESCRIBED FOR PUBLICATION OF THE SUMMONS.

(B) THIS SECTION DOES NOT AUTHORIZE SERVICE BY PUBLICATION ON ANY PERSON NAMED AS AN UNKNOWN DEFENDANT WHO IS IN OPEN AND ACTUAL POSSESSION OF THE PROPERTY.

14-706.

(A) IF THE COURT ORDERS SERVICE BY PUBLICATION, THE PLAINTIFF SHALL:

(1) POST, NOT LATER THAN 10 DAYS AFTER THE DATE THE ORDER IS ISSUED, A COPY OF THE SUMMONS AND COMPLAINT IN A CONSPICUOUS PLACE ON THE PROPERTY THAT IS THE SUBJECT OF THE ACTION; AND

(2) FILE PROOF THAT THE SUMMONS HAS BEEN SERVED, POSTED, AND PUBLISHED AS REQUIRED IN THE ORDER.

(B) IF THE COURT ORDERS SERVICE BY PUBLICATION, THE PUBLICATION SHALL USE THE LEGAL DESCRIPTION OF THE PROPERTY ALONG WITH ITS STREET ADDRESS, OR OTHER COMMON DESIGNATION, IF ANY.

14-707.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, THE COURT SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY BY ORDERING AN APPRAISAL IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION.

(B) THE COURT MAY ACCEPT A PREVIOUSLY COMPLETED APPRAISAL FILED WITH THE COURT AS EVIDENCE OF VALUE PROVIDED THAT:

(1) THE APPRAISAL IS DATED NOT EARLIER THAN 6 MONTHS BEFORE THE FILING OF THE PARTITION ACTION;

(Over)

(2) THE APPRAISAL WAS COMPLETED BY A DISINTERESTED REAL ESTATE APPRAISER LICENSED IN THE STATE; AND

(3) NO PARTY OBJECTS TO THE APPRAISED VALUE.

(C) IF ALL COTENANTS HAVE AGREED TO THE VALUE OF THE PROPERTY OR TO ANOTHER METHOD OF VALUATION, THE COURT SHALL ADOPT THAT VALUE OR THE VALUE PRODUCED BY THE AGREED METHOD OF VALUATION.

(D) IF THE COURT DETERMINES THAT THE EVIDENTIARY VALUE OF AN APPRAISAL IS OUTWEIGHED BY THE COST OF THE APPRAISAL AND NO PREVIOUSLY COMPLETED APPRAISAL WAS FILED UNDER SUBSECTION (B) OF THIS SECTION, THE COURT, AFTER AN EVIDENTIARY HEARING, SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY AND SEND NOTICE TO THE PARTIES OF THE VALUE.

(E) (1) IF THE COURT ORDERS AN APPRAISAL UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL APPOINT A DISINTERESTED REAL ESTATE APPRAISER LICENSED IN THE STATE TO DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY ASSUMING SOLE OWNERSHIP OF THE FEE SIMPLE ESTATE.

(2) ON COMPLETION OF THE APPRAISAL, THE APPRAISER SHALL FILE A SWORN OR VERIFIED APPRAISAL WITH THE COURT.

(F) IF AN APPRAISAL IS CONDUCTED UNDER SUBSECTION (A) OF THIS SECTION OR FILED WITH THE COURT UNDER SUBSECTION (B) OF THIS SECTION, NOT LATER THAN 10 DAYS AFTER THE APPRAISAL IS FILED, THE COURT SHALL SEND NOTICE TO EACH PARTY WITH A KNOWN ADDRESS, STATING:

(1) THE APPRAISED FAIR MARKET VALUE OF THE PROPERTY;

(2) THAT THE APPRAISAL IS AVAILABLE AT THE OFFICE OF THE CLERK; AND

(3) THAT A PARTY MAY FILE WITH THE COURT AN OBJECTION TO THE APPRAISAL NOT LATER THAN 30 DAYS AFTER THE NOTICE IS SENT, STATING THE GROUNDS FOR THE OBJECTION.

(G) (1) IF AN APPRAISAL IS FILED WITH THE COURT UNDER SUBSECTION (E) OF THIS SECTION, THE COURT SHALL CONDUCT A HEARING TO DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY NOT SOONER THAN 30 DAYS AFTER A COPY OF THE NOTICE OF THE APPRAISAL IS SENT TO EACH PARTY UNDER SUBSECTION (F) OF THIS SECTION, WHETHER OR NOT AN OBJECTION TO THE APPRAISAL IS FILED UNDER SUBSECTION (F)(3) OF THIS SECTION.

(2) IN ADDITION TO AN APPRAISAL DESCRIBED UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE COURT MAY CONSIDER ANY OTHER EVIDENCE OF VALUE OFFERED BY A PARTY.

(H) AFTER A HEARING UNDER SUBSECTION (G) OF THIS SECTION, BUT BEFORE CONSIDERING THE MERITS OF THE PARTITION ACTION, THE COURT SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY AND SEND NOTICE TO THE PARTIES OF THE VALUE.

14-708.

(A) IF ANY COTENANT REQUESTED PARTITION BY SALE, AFTER THE DETERMINATION OF VALUE UNDER § 14-707 OF THIS SUBTITLE, THE COURT SHALL SEND NOTICE TO THE PARTIES THAT ANY COTENANT, EXCEPT A COTENANT THAT REQUESTED PARTITION BY SALE, MAY BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE.

(Over)

(B) NOT LATER THAN 45 DAYS AFTER THE NOTICE IS SENT UNDER SUBSECTION (A) OF THIS SECTION, ANY COTENANT, EXCEPT A COTENANT THAT REQUESTED PARTITION BY SALE, MAY GIVE NOTICE TO THE COURT THAT THE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE.

(C) THE PURCHASE PRICE FOR EACH OF THE INTERESTS OF A COTENANT THAT REQUESTED PARTITION BY SALE IS THE VALUE OF THE ENTIRE PARCEL DETERMINED UNDER § 14-707 OF THIS SUBTITLE MULTIPLIED BY THE COTENANT'S FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL.

(D) AFTER EXPIRATION OF THE PERIOD DESCRIBED IN SUBSECTION (B) OF THIS SECTION, THE FOLLOWING RULES APPLY:

(1) IF ONLY ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL NOTIFY ALL THE PARTIES;

(2) IF MORE THAN ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL:

(i) ALLOCATE THE RIGHT TO BUY THOSE INTERESTS AMONG THE ELECTING COTENANTS BASED ON EACH ELECTING COTENANT'S EXISTING FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL DIVIDED BY THE TOTAL EXISTING FRACTIONAL OWNERSHIP OF ALL COTENANTS ELECTING TO BUY;

(ii) NOTIFY ALL THE PARTIES THAT MORE THAN ONE COTENANT ELECTED TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE; AND

(III) SEND NOTICE OF THE PRICE TO BE PAID BY EACH ELECTING COTENANT; OR

(3) IF NO COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL SEND NOTICE TO ALL THE PARTIES AND RESOLVE THE PARTITION ACTION UNDER § 14-711(A) AND (B) OF THIS SUBTITLE.

(E) (1) IF THE COURT SENDS NOTICE TO THE PARTIES UNDER SUBSECTION (D)(1) OR (2) OF THIS SECTION, THE COURT SHALL SET A DATE NOT SOONER THAN 60 DAYS AFTER THE DATE THE NOTICE WAS SENT BY WHICH ELECTING COTENANTS MUST PAY THEIR APPORTIONED PRICE INTO THE COURT.

(2) AFTER THE DATE SET BY THE COURT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE FOLLOWING RULES APPLY:

(I) IF ALL ELECTING COTENANTS PAY THEIR APPORTIONED PRICE INTO COURT ON TIME, THE COURT SHALL ISSUE AN ORDER REALLOCATING ALL THE INTERESTS OF THE COTENANTS AND DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THE FUNDS;

(II) IF NO ELECTING COTENANT PAYS THE COTENANT'S APPORTIONED PRICE ON TIME, THE COURT SHALL RESOLVE THE PARTITION ACTION UNDER § 14-709(A) AND (B) OF THIS SUBTITLE AS IF THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE NOT PURCHASED; OR

(III) IF ONE OR MORE BUT NOT ALL OF THE ELECTING COTENANTS FAIL TO PAY THEIR APPORTIONED PRICE ON TIME, THE COURT, ON MOTION, SHALL GIVE NOTICE OF THE INTEREST REMAINING AND THE PRICE FOR THAT INTEREST TO THE ELECTING COTENANTS THAT PAID THEIR APPORTIONED PRICE.

(Over)

(F) (1) NOT LATER THAN 20 DAYS AFTER THE COURT GIVES NOTICE UNDER SUBSECTION (E)(2)(III) OF THIS SECTION, ANY COTENANT THAT PAID THE COTENANT'S APPORTIONED PRICE MAY ELECT TO PURCHASE ALL OF THE REMAINING INTEREST BY PAYING THE ENTIRE PRICE INTO THE COURT.

(2) AFTER THE 20-DAY PERIOD DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE FOLLOWING RULES APPLY:

(I) IF ONLY ONE COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL:

1. ISSUE AN ORDER REALLOCATING THE REMAINING INTEREST TO THAT COTENANT; AND

2. PROMPTLY ISSUE AN ORDER REALLOCATING THE INTERESTS OF ALL OF THE COTENANTS AND DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THEM;

(II) IF NO COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL RESOLVE THE PARTITION ACTION UNDER § 14-709(A) AND (B) OF THIS SUBTITLE AS IF THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE NOT PURCHASED; AND

(III) IF MORE THAN ONE COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL:

1. REAPPORTION THE REMAINING INTEREST AMONG THOSE PAYING COTENANTS, BASED ON EACH PAYING COTENANT'S ORIGINAL FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL DIVIDED BY THE TOTAL ORIGINAL FRACTIONAL OWNERSHIP OF ALL COTENANTS THAT PAID THE ENTIRE PRICE FOR THE REMAINING INTEREST; AND

2. PROMPTLY ISSUE AN ORDER REALLOCATING ALL OF THE COTENANTS' INTERESTS, DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THEM, AND REFUND ANY EXCESS PAYMENT HELD BY THE COURT.

(G) NOT LATER THAN 45 DAYS AFTER THE COURT SENDS NOTICE TO THE PARTIES UNDER SUBSECTION (A) OF THIS SECTION, ANY COTENANT ENTITLED TO BUY AN INTEREST UNDER THIS SECTION MAY REQUEST THE COURT TO AUTHORIZE THE SALE AS PART OF THE PENDING ACTION OF THE INTERESTS OF COTENANTS NAMED AS DEFENDANTS AND SERVED WITH THE COMPLAINT BUT THAT DID NOT APPEAR IN THE ACTION.

(H) IF THE COURT RECEIVES A TIMELY REQUEST UNDER SUBSECTION (G) OF THIS SECTION, THE COURT, AFTER A HEARING, MAY DENY THE REQUEST OR AUTHORIZE THE REQUESTED ADDITIONAL SALE ON TERMS THE COURT DETERMINES ARE FAIR AND REASONABLE, SUBJECT TO THE FOLLOWING LIMITATIONS:

(1) A SALE AUTHORIZED UNDER THIS SUBSECTION MAY OCCUR ONLY AFTER THE PURCHASE PRICES FOR ALL INTERESTS SUBJECT TO SALE UNDER SUBSECTIONS (A) THROUGH (F) OF THIS SECTION HAVE BEEN PAID INTO COURT AND THOSE INTERESTS HAVE BEEN REALLOCATED AMONG THE COTENANTS AS PROVIDED IN SUBSECTIONS (A) THROUGH (F) OF THIS SECTION; AND

(2) THE PURCHASE PRICE FOR THE INTEREST OF A NONAPPEARING COTENANT IS BASED ON THE COURT'S DETERMINATION OF VALUE UNDER § 14-707 OF THIS SUBTITLE.

14-709.

(Over)

(A) (1) IF UNDER § 14-708 OF THIS SUBTITLE ALL THE INTERESTS OF ALL COTENANTS THAT REQUESTED PARTITION BY SALE ARE NOT PURCHASED BY OTHER COTENANTS, OR IF AFTER THE CONCLUSION OF THE BUYOUT A COTENANT REMAINS THAT HAS REQUESTED PARTITION IN KIND, THE COURT SHALL ORDER PARTITION IN KIND UNLESS THE COURT, AFTER CONSIDERATION OF THE FACTORS LISTED IN § 14-710 OF THIS SUBTITLE, FINDS THAT PARTITION IN KIND WILL RESULT IN GREAT PREJUDICE TO THE COTENANTS AS A GROUP.

(2) IN CONSIDERING WHETHER TO ORDER PARTITION IN KIND, THE COURT SHALL APPROVE A REQUEST BY TWO OR MORE PARTIES TO HAVE THEIR INDIVIDUAL INTERESTS AGGREGATED.

(B) IF THE COURT DOES NOT ORDER PARTITION IN KIND UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL ORDER PARTITION BY SALE UNDER § 14-711 OF THIS SUBTITLE OR, IF NO COTENANT REQUESTED PARTITION BY SALE, THE COURT SHALL DISMISS THE ACTION.

(C) IF THE COURT ORDERS PARTITION IN KIND IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, THE COURT MAY REQUIRE THAT ONE OR MORE COTENANTS PAY ONE OR MORE OTHER COTENANTS AMOUNTS SO THAT THE PAYMENTS, TAKEN TOGETHER WITH THE VALUE OF THE IN-KIND DISTRIBUTIONS TO THE COTENANTS, WILL MAKE THE PARTITION IN KIND JUST AND PROPORTIONATE IN VALUE TO THE FRACTIONAL INTERESTS HELD.

(D) IF THE COURT ORDERS PARTITION IN KIND, THE COURT SHALL ALLOCATE TO THE COTENANTS THAT ARE UNKNOWN, UNLOCATABLE, OR THE SUBJECT OF A DEFAULT JUDGMENT, IF THEIR INTERESTS WERE NOT BOUGHT OUT UNDER § 14-708 OF THIS SUBTITLE, A PART OF THE PROPERTY REPRESENTING THE COMBINED INTERESTS OF THESE COTENANTS AS DETERMINED BY THE COURT AND THIS PART OF THE PROPERTY SHALL REMAIN UNDIVIDED.

14-710.

(A) IN DETERMINING WHETHER PARTITION IN KIND UNDER § 14-709(A) OF THIS SUBTITLE WOULD RESULT IN GREAT PREJUDICE TO THE COTENANTS AS A GROUP, THE COURT SHALL CONSIDER THE FOLLOWING:

(1) WHETHER THE PROPERTY PRACTICABLY CAN BE DIVIDED AMONG THE COTENANTS;

(2) WHETHER PARTITION IN KIND WOULD APPORTION THE PROPERTY IN SUCH A WAY THAT THE AGGREGATE FAIR MARKET VALUE OF THE PARCELS RESULTING FROM THE DIVISION WOULD BE MATERIALLY LESS THAN THE VALUE OF THE PROPERTY IF IT WERE SOLD AS A WHOLE, TAKING INTO ACCOUNT THE CONDITION UNDER WHICH A COURT-ORDERED SALE LIKELY WOULD OCCUR;

(3) EVIDENCE OF THE COLLECTIVE DURATION OF OWNERSHIP OR POSSESSION OF THE PROPERTY BY A COTENANT AND ONE OR MORE PREDECESSORS IN TITLE OR PREDECESSORS IN POSSESSION TO THE COTENANT WHO ARE OR WERE RELATIVES OF THE COTENANT OR EACH OTHER;

(4) THE SENTIMENTAL ATTACHMENT OF A COTENANT TO THE PROPERTY, INCLUDING ANY ATTACHMENT ARISING BECAUSE THE PROPERTY HAS ANCESTRAL OR OTHER UNIQUE OR SPECIAL VALUE TO THE COTENANT;

(5) THE LAWFUL USE BEING MADE OF THE PROPERTY BY A COTENANT AND THE DEGREE TO WHICH THE COTENANT WOULD BE HARMED IF THE COTENANT COULD NOT CONTINUE THE SAME USE OF THE PROPERTY;

(6) THE DEGREE TO WHICH THE COTENANTS HAVE CONTRIBUTED THEIR PRO RATA SHARE OF THE PROPERTY TAXES, INSURANCE, AND OTHER EXPENSES ASSOCIATED WITH MAINTAINING OWNERSHIP OF THE PROPERTY OR

(Over)

HAVE CONTRIBUTED TO THE PHYSICAL IMPROVEMENT, MAINTENANCE, OR UPKEEP OF THE PROPERTY; AND

(7) ANY OTHER RELEVANT FACTOR.

(B) THE COURT MAY NOT CONSIDER ANY ONE FACTOR IN SUBSECTION (A) OF THIS SECTION TO BE DISPOSITIVE WITHOUT WEIGHING THE TOTALITY OF ALL RELEVANT FACTORS AND CIRCUMSTANCES.

14-711.

(A) IF THE COURT ORDERS A SALE OF PROPERTY, THE SALE SHALL BE AN OPEN-MARKET SALE UNLESS THE COURT FINDS THAT A SALE BY SEALED BIDS OR AN AUCTION WOULD BE MORE ECONOMICALLY ADVANTAGEOUS AND IN THE BEST INTEREST OF THE COTENANTS AS A GROUP.

(B) (1) IF THE COURT ORDERS AN OPEN-MARKET SALE AND THE PARTIES, NOT LATER THAN 10 DAYS AFTER THE ENTRY OF THE ORDER, AGREE ON A REAL ESTATE BROKER LICENSED IN THE STATE TO OFFER THE PROPERTY FOR SALE, THE COURT SHALL APPOINT THE BROKER AND ESTABLISH A REASONABLE COMMISSION.

(2) IF THE PARTIES DO NOT AGREE ON A BROKER, THE COURT SHALL APPOINT A DISINTERESTED REAL ESTATE BROKER LICENSED IN THE STATE TO OFFER THE PROPERTY FOR SALE AND SHALL ESTABLISH A REASONABLE COMMISSION.

(3) A BROKER APPOINTED UNDER THIS SUBSECTION SHALL OFFER THE PROPERTY FOR SALE IN A COMMERCIALY REASONABLE MANNER AT A PRICE NOT LOWER THAN THE DETERMINATION OF VALUE AND ON THE TERMS AND CONDITIONS ESTABLISHED BY THE COURT.

(C) IF THE BROKER APPOINTED UNDER SUBSECTION (B) OF THIS SECTION OBTAINS WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE DETERMINATION OF VALUE;

(1) THE BROKER SHALL COMPLY WITH THE REPORTING REQUIREMENTS IN § 14-712 OF THIS SUBTITLE; AND

(2) THE SALE MAY BE COMPLETED IN ACCORDANCE WITH STATE LAW OTHER THAN THIS SUBTITLE.

(D) IF THE BROKER APPOINTED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT OBTAIN WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE DETERMINATION OF VALUE, THE COURT, AFTER HEARING, MAY:

(1) APPROVE THE HIGHEST OUTSTANDING OFFER, IF ANY;

(2) REDETERMINE THE VALUE OF THE PROPERTY AND ORDER THAT THE PROPERTY CONTINUE TO BE OFFERED FOR AN ADDITIONAL TIME; OR

(3) ORDER THAT THE PROPERTY BE SOLD BY SEALED BIDS OR AT AN AUCTION.

(E) IF THE COURT ORDERS A SALE BY SEALED BIDS OR AN AUCTION, THE COURT SHALL SET TERMS AND CONDITIONS OF THE SALE.

(F) IF A PURCHASER IS ENTITLED TO A SHARE OF THE PROCEEDS OF THE SALE, THE PURCHASER IS ALSO ENTITLED TO A CREDIT AGAINST THE PRICE IN AN AMOUNT EQUAL TO THE PURCHASER'S SHARE OF THE PROCEEDS.

14-712.

(Over)

(A) A BROKER APPOINTED UNDER § 14-711(B) OF THIS SUBTITLE TO OFFER PROPERTY FOR OPEN-MARKET SALE SHALL FILE A REPORT WITH THE COURT NOT LATER THAN 7 DAYS AFTER RECEIVING AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE VALUE DETERMINED UNDER § 14-707 OR § 14-711 OF THIS SUBTITLE.

(B) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL CONTAIN THE FOLLOWING INFORMATION:

(1) A DESCRIPTION OF THE PROPERTY TO BE SOLD TO EACH BUYER;

(2) THE NAME OF EACH BUYER;

(3) THE PROPOSED PURCHASE PRICE;

(4) THE TERMS AND CONDITIONS OF THE PROPOSED SALE, INCLUDING THE TERMS OF ANY OWNER FINANCING;

(5) THE AMOUNTS TO BE PAID TO LIENHOLDERS;

(6) A STATEMENT OF CONTRACTUAL OR OTHER ARRANGEMENTS OR CONDITIONS OF THE BROKER'S COMMISSION; AND

(7) OTHER MATERIAL FACTS RELEVANT TO THE SALE.

14-713.

THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. § 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE § 101(C) OF THAT ACT, 15

SB0092/953722/01 Judicial Proceedings Committee
Amendments to SB 92
Page 17 of 17

U.S.C. § 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN § 103(B) OF THAT ACT, 15 U.S.C. § 7003(B).” .