

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 777 (Delegates Rosenberg and Stein)

Environment and Transportation and
Judiciary

Judicial Proceedings

Real Property - Partition of Property

This bill establishes new procedures for the partition of real property. Among other provisions, the bill (1) requires the court in an action to partition real property to determine the market value of the property unless the court makes specified determinations; (2) establishes procedures for the purchase of interests in real property by cotenants and for the partition in kind of real property among cotenants; and (3) specifies requirements relating to the sale of such property. The bill only applies prospectively and may not be applied or interpreted to have any effect on or application to any partition action filed before the effective date of the bill.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Partition by sale” means a court-ordered sale of property, whether by auction, sealed bids, or open-market sale, as specified under the bill.

“Partition in kind” means the division of property into physically distinct and separately titled parcels.

Partition Procedures – Generally

The bill (1) establishes that real property must be partitioned according to the bill’s requirements unless all of the cotenants agree otherwise in a record; (2) repeals existing provisions in the Real Property Article (§ 14-107) related to the partition of property; and (3) specifies that statutory provisions under the Estates and Trusts Article in regard to partition are subject to the requirements of the bill. The Maryland Rules apply to actions under the bill’s provisions, except to the extent they are inconsistent.

Initial Commencement of Partition Action and Notice

In a partition action, the court, upon a motion of any party or of its own volition, may issue an order to:

- appoint an attorney to protect the interest of any party to the same extent and effect as provided under the Maryland Rules, as specified;
- require joinder of any additional parties that are necessary or proper; and
- require the plaintiff in the matter to procure a title report, as specified, and designate a place where the title report must be kept for inspection, use, and copying.

In addition to any persons required to be named as defendants in an action under the bill’s provisions, the bill authorizes the plaintiff to 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.

If, on affidavit of the plaintiff, the court is satisfied that a 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 must order service by publication as permitted under the Maryland Rules and the bill’s provisions. The court must also require that a copy of the summons, complaint, and 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.

Service by publication may not be used on any person named as an unknown defendant who is in open and actual possession of the property.

When providing service by publication, the plaintiff must, no later than 10 days after the court's order is issued, post a copy of the summons and complaint in a conspicuous place on the property that is the subject of the action and file proof that the summons has been served, posted, and published. The publication must use the legal description of the property along with its street address, or other common designation, if any.

Determination of Value

The bill specifies four valuation methods for real property in a partition action: (1) a court determination of the fair market value, after an appraisal and an evidentiary hearing; (2) a previously completed appraisal filed with the court that meets specified requirements (with no objection by a party to the appraised value); (3) if the court determines that the evidentiary value of an appraisal is outweighed by its costs and no previously completed appraisal was filed, as specified, a court determination of the fair market value after an evidentiary hearing; or (4) unanimous agreement of the cotenants on either a valuation or another valuation method.

If the court orders an appraisal, as specified, the court must appoint a disinterested real estate appraiser licensed in the State to determine the fair market value of the property. Following completion of the appraisal, the appraiser must file a sworn or verified appraisal with the court. The court must then send notice to the parties no later than 10 days after the appraisal is filed, indicating the appraised fair market value and the parties' ability to file with the court an objection to the appraisal within 30 days after the notice is sent.

Regardless of whether any objection to the appraisal is filed, the court must hold a hearing to determine the fair market value, in which the court may consider any other evidence of value offered by a party in addition to the court-ordered appraisal. After the evidentiary hearing, but before the court's consideration of the merits of the partition, the court must determine the fair market value of the property and send notice of the value to the parties.

Buyout and Partition Process

If any cotenant requested partition by sale, the bill establishes a process by which cotenants other than those that requested partition by sale may buy all the interests of the cotenants that requested partition by sale and may also 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. The court must manage this process and send specified notices. The court must also receive and disburse payments made for purchasing of the interests of the cotenants that requested partition by sale, as specified.

The bill establishes a process for partition in kind of property, where, if 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 process a cotenant remains that has requested partition in kind, the court must order partition in kind unless it determines that partition in kind will result in great prejudice to the cotenants as a group. In making that determination, the court must consider the following:

- whether the property practicably can be divided among the cotenants;
- 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;
- 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;
- 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;
- 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;
- 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 have contributed to the physical improvement, maintenance, or upkeep of the property; and
- any other relevant factor.

The court may not consider any one factor to be dispositive without weighing the totality of all relevant factors and circumstances. In considering whether to order partition in kind, the court must approve a request by two or more parties to have their individual interests aggregated. If the court orders partition in kind, it 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. The bill specifies additional requirements regarding allocations to any cotenants that are unknown, unlocatable, or the subject of a default judgment, as specified.

If the court does not order partition in kind, the court must order partition by sale, or, if no cotenant requested partition by sale, the court must dismiss the action. If the court orders a sale, the sale must be an open-market sale, unless the court finds that a sale by sealed bids or auction would be more economically advantageous and in the best interests of the cotenants as a group.

The parties may agree on a real estate broker licensed in the State. If they do not, the court must appoint a disinterested real estate broker licensed in the State to offer the property for sale. The court must also establish a reasonable commission. If any offers received by the broker do not reach the value of the property as set by the court, then the court may, after a hearing (1) approve the highest outstanding offer; (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, as specified. A report of the sale with required information must be filed with the court, as specified.

Current Law: Under § 14-107 of the Real Property Article, the court may order the partition of any property, either legal or equitable, when petitioned by any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If the court is unable to divide the property without loss or injury to the interested parties, the court may order the sale of the property. Subsequently, the court must divide the proceeds resulting from the sale among the interested 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 petition does not need to request a partition of all the lots or tracts.

Under the Estates and Trusts Article, when two or more heirs or legatees are entitled to distribution of undivided interests in property of the estate, the personal representative or one or more of the heirs or legatees may petition the court before the formal or informal closing of the estate, to make partition. After notice to the interested heirs or legatees, the court must partition the property in the same manner as provided by law for civil actions of partition. The court may direct the personal representative to sell property that cannot be partitioned without prejudice to the owners and cannot conveniently be allotted to one party.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 92 (Senator Augustine, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

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