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## SENATE BILL NO. 774

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Chafin

on February 9, 2018)

(Patron Prior to Substitute—Senator Chafin)

A BILL to amend and reenact § 8.01-83 of the Code of Virginia, relating to partition; election to purchase.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-83 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-83. Allotment to one or more parties, or sale, in lieu of partition.

When partition cannot be conveniently made, the property may be transferred, sold, or allotted in the following manner:

1. One or more of the defendants in the suit for partition may elect to purchase the property at its fair market value, as determined by the court. Such defendant or group of defendants shall file a petition for election to purchase the property within 60 days of the filing of the suit for partition, and a hearing shall be held within 60 days of such filing. At the hearing on the petition for election, the petitioner shall prove by a preponderance of the evidence that he has the financial ability to purchase the property. Either an irrevocable letter of credit issued by a financial institution in the amount equal to 150% of the real estate tax assessed value of the property or the deposit into escrow with the clerk of the circuit court of an amount equal to 150% of the real estate tax assessed value shall be prima facie evidence of such ability to purchase. An election pursuant to this subdivision shall be irrevocable by the petitioner; however, if the petitioner is not able to prove that he has the financial ability to purchase the property at the hearing or the election to purchase fails to close and title fails to pass to the petitioner for any reason, then the court may order that the petitioner pay reasonable attorney fees and costs to the opposing party and may proceed with allotting the property pursuant to subdivision 2, or with selling the property pursuant to subdivision 3, if allotment under subdivision 2 is not possible.

2. If no defendant elects to purchase the property or if a petitioner's election to purchase is not successful pursuant to subdivision 1, then the entire subject may be allotted to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to; ~~or in any case in which partition cannot be conveniently made, if.~~

3. If no defendant elects to purchase the property or if a petitioner's election to purchase is not successful pursuant to subdivision 1 and the property is not allotted pursuant to subdivision 2, then, if the interest of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, the court, notwithstanding any of those entitled may be a person under a disability, may order such sale, or an allotment of a part thereof to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to, and a sale of the residue, and make distribution of the proceeds of sale, according to the respective rights of those entitled, taking care, when there are creditors of any deceased person who was a tenant in common, joint tenant, or coparcener, to have the proceeds of such deceased person's part applied according to the rights of such creditors.