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SENATE BILL NO. 1190

Offered January 9, 2019

Prefiled January 3, 2019

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 9.1, consisting of sections numbered 8.01-93.1 through 8.01-93.11, relating to Uniform Partition of Heirs Property Act.*

Patrons—Dance; Delegate: Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 9.1, consisting of sections numbered 8.01-93.1 through 8.01-93.11, as follows:

Article 9.1.

Uniform Partition of Heirs Property Act.

§ 8.01-93.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

"Collateral" means an individual who is related to another individual under the law of intestate succession of the Commonwealth but who is not the other individual's ascendant or descendant.

"Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

"Determination of value" means a court order determining the fair market value of heirs property under § 8.01-93.4 or 8.01-93.8 or adopting the valuation of the property agreed to by all cotenants.

"Heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

1. There is no agreement in a record binding all the cotenants that governs the partition of the property;

2. One or more of the cotenants acquired title from a relative, whether living or deceased; and

3. Any of the following apply:

a. Twenty percent or more of the interests are held by cotenants who are relatives;

b. Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

c. Twenty percent or more of the cotenants are relatives.

"Partition" by sale means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under § 8.01-93.8.

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

"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.

"Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of the Commonwealth other than this article.

§ 8.01-93.2. Applicability; relation to other law.

A. This article applies to partition actions filed on or after July 1, 2019.

B. In an action to partition real property under Article 9 (§ 8.01-81 et seq.), the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this article unless all of the cotenants otherwise agree in a record.

C. This article supplements Article 9 (§ 8.01-81 et seq.) and, if an action is governed by this article, replaces provisions of Article 9 that are inconsistent with this article.

§ 8.01-93.3. Service; notice by posting.

A. This article does not limit or affect the method by which service of process in a partition action may be made.

B. If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the

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59 common designation by which the property is known. The court may require the plaintiff to publish on
60 the sign the name of the plaintiff and the known defendants.

61 **§ 8.01-93.4. Determination of value.**

62 A. Except as otherwise provided in subsections B and C, if the court determines that the property
63 that is the subject of a partition action is heirs property, the court shall determine the fair market value
64 of the property by ordering an appraisal pursuant to subsection D.

65 B. If all cotenants have agreed to the value of the property or to another method of valuation, the
66 court shall adopt that value or the value produced by the agreed method of valuation.

67 C. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the
68 appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property
69 and send notice to the parties of the value.

70 D. If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser
71 licensed in the Commonwealth to determine the fair market value of the property assuming sole
72 ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or
73 verified appraisal with the court.

74 E. If an appraisal is conducted pursuant to subsection D, not later than 10 days after the appraisal
75 is filed, the court shall send notice to each party with a known address, stating:

- 76 1. The appraised fair market value of the property;
77 2. That the appraisal is available at the clerk's office; and
78 3. That a party may file with the court an objection to the appraisal not later than 30 days after the
79 notice is sent, stating the grounds for the objection.

80 F. If an appraisal is filed with the court pursuant to subsection D, the court shall conduct a hearing
81 to determine the fair market value of the property not sooner than 30 days after a copy of the notice of
82 the appraisal is sent to each party under subsection E, whether or not an objection to the appraisal is
83 filed under subdivision E 3. In addition to the court-ordered appraisal, the court may consider any other
84 evidence of value offered by a party.

85 G. After a hearing under subsection F, but before considering the merits of the partition action, the
86 court shall determine the fair market value of the property and send notice to the parties of the value.

87 **§ 8.01-93.5. Cotenant buyout.**

88 A. If any cotenant requested partition by sale, after the determination of value under § 8.01-93.4,
89 the court shall send notice to the parties that any cotenant except a cotenant that requested partition by
90 sale may buy all the interests of the cotenants that requested partition by sale.

91 B. Not later than 45 days after the notice is sent under subsection A, any cotenant except a cotenant
92 that requested partition by sale may give notice to the court that it elects to buy all the interests of the
93 cotenants that requested partition by sale.

94 C. The purchase price for each of the interests of a cotenant that requested partition by sale is the
95 value of the entire parcel determined under § 8.01-93.4 multiplied by the cotenant's fractional ownership
96 of the entire parcel.

97 D. After expiration of the period in subsection B, the following rules apply:

- 98 1. If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale,
99 the court shall notify all the parties of that fact.
100 2. If more than one cotenant elects to buy all the interests of the cotenants that requested partition
101 by sale, the court shall allocate the right to buy those interests among the electing cotenants based on
102 each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing
103 fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and
104 of the price to be paid by each electing cotenant.
105 3. If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the
106 court shall send notice to all the parties of that fact and resolve the partition action under subsections A
107 and B of § 8.01-93.6.

108 E. If the court sends notice to the parties under subdivisions D 1 or 2, the court shall set a date, not
109 sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their
110 apportioned price into the court. After this date, the following rules apply:

111 1. If all electing cotenants timely pay their apportioned price into court, the court shall issue an
112 order reallocating all the interests of the cotenants and disburse the amounts held by the court to the
113 persons entitled to them.

114 2. If no electing cotenant timely pays its apportioned price, the court shall resolve the partition
115 action under subsections A and B of § 8.01-93.6 as if the interests of the cotenants that requested
116 partition by sale were not purchased.

117 3. If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the
118 court, upon motion, shall give notice to the electing cotenants that paid their apportioned price of the
119 interest remaining and the price for all that interest.

120 F. Not later than 20 days after the court gives notice pursuant to subdivision E 3, any cotenant that

paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

1. If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

2. If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under subsections A and B of § 8.01-93.6 as if the interests of the cotenants that requested partition by sale were not purchased.

3. If more than one cotenant pays the entire price for the remaining interest, the court shall 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. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

G. Not later than 45 days after the court sends notice to the parties pursuant to subsection A, 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 petition but that did not appear in the action.

H. If the court receives a timely request under subsection G, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as 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 have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

2. The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under § 8.01-93.4.

§ 8.01-93.6. Partition alternatives.

A. If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to § 8.01-93.5, or if after conclusion of the buyout under § 8.01-93.5, 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 § 8.01-93.7, finds that partition in kind will result in manifest prejudice to the cotenants as a group. 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, the court shall order partition by sale pursuant to § 8.01-93.8 or, if no cotenant requested partition by sale, the court shall dismiss the action.

C. If the court orders partition in kind pursuant to subsection A, 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 pursuant to § 8.01-93.5, 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.

§ 8.01-93.7. Considerations for partition in kind.

A. In determining under subsection A of § 8.01-93.6 whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

1. Whether the heirs 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. A cotenant's sentimental attachment 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 have

182 contributed to the physical improvement, maintenance, or upkeep of the property; and

183 7. Any other relevant factor.

184 B. The court may not consider any one factor in subsection A to be dispositive without weighing the
185 totality of all relevant factors and circumstances.

186 **§ 8.01-93.8. Open-market sale, sealed bids, or auction.**

187 A. If the court orders a sale of heirs property, the sale must be an open-market sale unless the court
188 finds that a sale by sealed bids or an auction would be more economically advantageous and in the best
189 interest of the cotenants as a group.

190 B. If the court orders an open-market sale and the parties, not later than 10 days after the entry of
191 the order, agree on a real estate broker licensed in the Commonwealth to offer the property for sale,
192 the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on
193 a broker, the court shall appoint a disinterested real estate broker licensed in the Commonwealth to
194 offer the property for sale and shall establish a reasonable commission. The broker shall offer the
195 property for sale in a commercially reasonable manner at a price no lower than the determination of
196 value and on the terms and conditions established by the court.

197 C. If the broker appointed under subsection B obtains within a reasonable time an offer to purchase
198 the property for at least the determination of value:

199 1. The broker shall comply with the reporting requirements in § 8.01-93.9; and

200 2. The sale may be completed in accordance with state law other than this article.

201 D. If the broker appointed under subsection B does not obtain within a reasonable time an offer to
202 purchase the property for at least the determination of value, the court, after hearing, may:

203 1. Approve the highest outstanding offer, if any;

204 2. Redetermine the value of the property and order that the property continue to be offered for an
205 additional time; or

206 3. Order that the property be sold by sealed bids or at an auction.

207 E. If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of
208 the sale. If the court orders an auction, the auction must be conducted in the same manner as an
209 auction ordered for a partition pursuant to Article 9 (§ 8.01-81 et seq.).

210 F. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a
211 credit against the price in an amount equal to the purchaser's share of the proceeds.

212 **§ 8.01-93.9. Report of open-market sale.**

213 A. A broker appointed under subsection B of § 8.01-93.8 to offer heirs property for open-market
214 sale shall file a report with the court not later than seven days after receiving an offer to purchase the
215 property for at least the value determined under § 8.01-93.4 or 8.01-93.8.

216 B. The report required by subsection A must contain the following information:

217 1. A description of the property to be sold to each buyer;

218 2. The name of each buyer;

219 3. The proposed purchase price;

220 4. The terms and conditions of the proposed sale, including the terms of any owner financing;

221 5. The amounts to be paid to lienholders;

222 6. A statement of contractual or other arrangements or conditions of the broker's commission; and

223 7. Other material facts relevant to the sale.

224 **§ 8.01-93.10. Uniformity of application and construction.**

225 In applying and construing this article, consideration must be given to the need to promote
226 uniformity of the law with respect to its subject matter among states that enact it.

227 **§ 8.01-93.11. Relation to federal Electronic Signatures in Global and National Commerce Act.**

228 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National
229 Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act,
230 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that
231 act, 15 U.S.C. § 7003(b).