VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 115

An Act to amend and reenact §§ 8.01-81 and 8.01-83 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 8.01-81.1, 8.01-83.1, 8.01-83.2, and 8.01-83.3; and to repeal § 8.01-82 of the Code of Virginia, relating to partition of property.

[H 1605]

Approved March 3, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-81 and 8.01-83 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-81.1, 8.01-83.1, 8.01-83.2, and 8.01-83.3 as follows:

§ 8.01-81. Who may compel partition of land; jurisdiction; validation of certain partitions of mineral rights; when shares of two or more laid off together.

Tenants in common, joint tenants, executors with the power to sell, and coparceners of real property, including mineral rights east and south of the Clinch River, shall be compellable to make partition and may compel partition, but in the case of an executor only if the power of sale is properly exercisable at that time under the circumstances; and a lien creditor or any owner of undivided estate in real estate may also compel partition for the purpose of subjecting the estate of his debtor or the rents and profits thereof to the satisfaction of his lien. Any court having general equity jurisdiction shall have jurisdiction in cases of partition~~;~~ , and in the exercise of such jurisdiction, *shall order partition in kind if the real property in question is susceptible to a practicable division and* may take cognizance of all questions of law affecting the legal title that may arise in any proceedings, between such tenants in common, joint tenants, executors with the power to sell, coparceners and lien creditors.

Any two or more of the parties, if they so elect, may have their shares laid off together when partition can be conveniently made in that way. If the court orders partition in kind, the court may require that one or more parties pay one or more parties' amounts so that the payments, taken together with the court-determined value of the in-kind distributions to the parties, will make the partition in kind just and proportionate in value to the fractional interests held. If the court orders partition in kind, the court shall allocate to the parties that are unknown, unlocatable, or the subject of a default judgment a part of the property representing the combined interests of such parties as determined by the court, and such part of the property shall remain undivided.

All partitions of mineral rights heretofore had~~,~~ are hereby validated.

§ 8.01-81.1. Determination of value.

A. Except as otherwise provided in subsections B and C, the court in every partition action shall order an appraisal pursuant to subsection D, and such appraisal shall inform the court's determination of fair market value under subsection F. The expense of the appraisal shall be taxed as costs.

B. If all parties have agreed to the value of the property or to another method of valuation, the court shall adopt such value or the value produced by the agreed-upon method of valuation.

C. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall enter an order to determine the fair market value for the property.

D. If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in the Commonwealth to assist the court in determining the fair market value of the property assuming sole ownership of the fee simple estate. Upon completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court and shall, within three business days of such filing, mail a notice of filing to all counsel of record stating:

1. The appraised fair market value of the property;

2. That the appraisal is available at the clerk's office; 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.

E. If an appraisal is filed with the court pursuant to subsection D, the court shall conduct a hearing to determine the fair market value of the property not sooner than 31 days after a copy of the notice of the appraisal is sent to each party under subsection D, whether or not an objection to the appraisal is filed under subdivision D 3. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

F. After a hearing under subsection E, but before considering the merits of the partition action, the court shall enter an order determining the fair market value of the property.

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

~~When partition~~ *A. If at least one party to a partition action petitions the court for allotment or for a*

partition sale, the court may order allotment pursuant to this section or, if the court determines allotment is not practicable, a sale pursuant to § 8.01-83.1.

B. Before a court is authorized to allot or sell an undivided interest in a partition action, it shall first determine that partition in kind cannot be ~~conveniently~~ *practicably* made~~, the~~. *When the subject land is not susceptible to a practicable division in kind, the court shall next consider an allotment of the* entire subject ~~may be allotted~~ *property* to any one or more of the parties who will accept it *for a price equal to the value determined pursuant to § 8.01-81.1,* 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,~~ *receive, notwithstanding that any of those entitled may be a person with a disability. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds. The court shall make distribution of the proceeds of the allotment 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.*

1. When the court considers allotment, it shall require the party or parties seeking allotment to notify all of the other parties (i) that the property may be allotted to any one or more of them who is willing to accept it and (ii) of the required price.

2. In the event that multiple parties seek allotment and disputes arise concerning such allotment, the court shall consider the following in making such allotment:

a. Evidence of the collective duration of ownership or possession of the property by a party and one or more predecessors in title or predecessors in possession to the party who are or were related to the party or each other;

b. A party's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the party;

c. The lawful use being made of the property by a party and the degree to which the party would be harmed if the party could not continue the same use of the property;

d. The degree to which the parties 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

e. Any other relevant factor.

The court shall not consider any one of the preceding factors to be dispositive without weighing the totality of all relevant factors and circumstances.

3. After the court determines which party or parties will participate in the allotment, the court shall notify all the parties of its decision and of the amount each party is to pay or receive for its allotted share pursuant to either this subsection or subsection C. The court shall set a date, not sooner than 60 days after notification to the parties, by which each party allotted a share of the property must pay the amount due to the court. If any party allocated a share fails to pay the amount due by the required date the court shall order a sale of the entire subject property pursuant to § 8.01-83.1, unless the court determines, based on the factors in this subsection, that it will allow another party or parties to acquire such share by paying for such share within a reasonable period of time set by the court.

C. If the court determines that such allotment of the entire subject is not practicable or is not equitable, and 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 *pursuant to subsection B* 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~~. *The price for the part of the property allotted to one or more parties shall be the fair market value of such part as determined by the court unless all the parties agree to a value for the part, which the court shall adopt. The sale of the residue shall be conducted pursuant to § 8.01-83.1. The court shall* make distribution of the proceeds of *the allotment and* sale *of the residue*, 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.

D. If the court determines neither allotment of the entire subject property nor of a party of the subject property is practicable or equitable, it shall order a sale pursuant to § 8.01-83.1.

§ 8.01-83.1. Open-market sale, sealed bids, or auction.

A. If the court orders a sale of property in a partition action under the provisions of § 8.01-83, the sale shall be an open-market sale unless the court finds that a sale by sealed bids or at auction would be more economically advantageous and in the best interests of the parties as a group.

B. 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 Commonwealth to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in the Commonwealth to

offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court, including setting a reasonable time for marketing the property at its court-determined value pursuant to § 8.01-81.1.

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

1. The broker shall promptly file a report containing (i) a description of the property to be sold to each buyer; (ii) the name of each buyer; (iii) the proposed purchase price; (iv) the terms and conditions of the proposed sale, including the terms of any owner financing; (v) the amounts to be paid to lienholders; (vi) a statement of contractual or other arrangements or conditions of the broker's commission; and (vii) other material facts relevant to the sale; and

2. The court shall hold a hearing to approve the same and shall appoint a special commissioner to make the sale and execute the deed pursuant to Article 11 (§ 8.01-96 et seq.).

D. If the broker appointed under subsection B does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a 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 period of time; or

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

E. If the court orders a sale by sealed bids or at auction, the court shall set terms and conditions of such sale by sealed bids or an auction.

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

§ 8.01-83.2. Notice by posting.

If the plaintiff in a partition action seeks an order of publication pursuant to § 8.01-316, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

§ 8.01-83.3. Commissioners.

If the court appoints commissioners pursuant to Article 11 (§ 8.01-96 et seq.), each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Article 11, shall be disinterested and impartial and not a party to or participant in the action.

2. That § 8.01-82 of the Code of Virginia is repealed.

3. That the provisions of this act shall only apply to partition actions filed on or after July 1, 2020.