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HOUSE BILL NO. 1755

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 8.01-81, 8.01-81.1, 8.01-83.3, and 8.01-92 of the Code of Virginia, relating to partition of property.

Patron—Campbell, J.L.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-81, 8.01-81.1, 8.01-83.3, and 8.01-92 of the Code of Virginia are amended and reenacted 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.

A. 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~~ has 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.

B. If the court orders partition in kind, it shall consider:

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

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

3. The lawful use being made of any portion 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 such portion of the property;

4. The degree to which a party has contributed to the physical improvement, maintenance, or upkeep of any portion of the property; and

5. Any other relevant factor.

C. All partitions of mineral rights heretofore had are hereby validated.

D. Unless displaced by a provision of this article, the established principles of Virginia partition law supplement this article.

§ 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 *advanced by the plaintiff, and such other parties as the court may determine in its discretion, and* taxed as costs so that such expenses will be shared by the parties to the extent of their respective interest in the property.

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

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

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

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

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

75 **§ 8.01-83.3. Commissioners.**

76 If the court appoints commissioners pursuant to Article 11 (§ 8.01-96 et seq.), each commissioner, in
77 addition to the requirements and disqualifications applicable to commissioners in Article 11, shall be
78 disinterested and impartial and not a party to or participant in the action; *however, any counsel for a*
79 *party may serve as a commissioner unless there is an objection by another party.*

80 **§ 8.01-92. Allowance of attorney fees out of unrepresented shares.**

81 In any partition suit when there are unrepresented shares, the court shall allow reasonable fees to the
82 attorney or attorneys bringing the action on account of the services rendered to the parceners
83 unrepresented by counsel *of record.*