

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4924

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 3304 (MCL 600.3304) and by adding chapter 34.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3304. **(1)** All persons holding lands as joint tenants or,
2 **subject to chapter 34**, as tenants in common may have those lands
3 partitioned.

4 **(2)** Chapter 34 supplements this chapter, and, if an action is
5 governed by chapter 34, it supersedes the provisions of this
6 chapter that are inconsistent with chapter 34.

7 **CHAPTER 34**

8 **PARTITION OF HEIRS PROPERTY**

9 Sec. 3401. This chapter may be known as the "uniform partition

1 of heirs property act".

2 Sec. 3402. As used in this chapter:

3 (a) "Ascendant" means an individual who precedes another
4 individual in lineage, in the direct line of ascent from the other
5 individual.

6 (b) "Collateral" means an individual who is related to another
7 individual under the law of intestate succession of this state but
8 who is not the other individual's ascendant or descendant.

9 (c) "Descendant" means an individual who follows another
10 individual in lineage, in the direct line of descent from the other
11 individual.

12 (d) "Determination of value" means a court order determining
13 the fair market value of heirs property under section 3406 or 3410
14 or adopting the valuation of the property agreed to by all
15 cotenants.

16 (e) "Heirs property" means real property held in tenancy in
17 common that satisfies all of the following requirements at the
18 filing of an action to partition real property:

19 (i) There is no agreement in a record binding all the cotenants
20 that governs the partition of the property.

21 (ii) One or more of the cotenants acquired title from a
22 relative, whether living or deceased.

23 (iii) Any of the following apply:

24 (A) Twenty percent or more of the interests are held by
25 cotenants who are relatives.

26 (B) Twenty percent or more of the interests are held by an
27 individual who acquired title from a relative, whether living or
28 deceased.

29 (C) Twenty percent or more of the cotenants are relatives.

1 (f) "Partition by sale" means a court-ordered sale of the
2 entire heirs property, whether by auction, sealed bids, or open-
3 market sale conducted under section 3410.

4 (g) "Partition in kind" means the division of heirs property
5 into physically distinct and separately titled parcels.

6 (h) "Record" means information that is inscribed on a tangible
7 medium or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

9 (i) "Relative" means an ascendant, descendant, or collateral
10 or an individual otherwise related to another individual by blood,
11 marriage, adoption, or law of this state other than this chapter.

12 Sec. 3403. (1) This chapter applies to an action to partition
13 real property filed after the effective date of this chapter.

14 (2) In an action to partition real property under chapter 33,
15 the court shall determine whether the property is heirs property.
16 If the court determines that the property is heirs property, the
17 property must be partitioned under this chapter unless all of the
18 cotenants otherwise agree in a record.

19 (3) This chapter supplements chapter 33. However, if an action
20 is governed by this chapter, it supersedes the provisions of
21 chapter 33 that are inconsistent with this chapter.

22 Sec. 3404. (1) This chapter does not limit or affect the
23 method by which service of a complaint may be made in an action to
24 partition real property.

25 (2) If the plaintiff in an action to partition real property
26 seeks notice by publication and the court determines that the
27 property may be heirs property, the plaintiff, not later than 10
28 days after the court's determination, shall post and maintain,
29 while the action is pending, a conspicuous sign on the property

1 that is the subject of the action. The sign must state that the
2 action has commenced and identify the name and address of the court
3 and the common designation by which the property is known. The
4 court may require the plaintiff to publish on the sign the name of
5 the plaintiff and the known defendants.

6 Sec. 3405. If the court appoints commissioners under chapter
7 33, each commissioner must be disinterested and impartial and must
8 not be a party to or a participant in the action to partition real
9 property.

10 Sec. 3406. (1) Except as otherwise provided in subsections (2)
11 and (3), if the court determines that the property that is the
12 subject of an action to partition real property is heirs property,
13 the court shall determine the fair market value of the property by
14 ordering an appraisal under subsection (4).

15 (2) If all cotenants have agreed to the value of the property
16 or to another method of valuation, the court shall adopt that value
17 or the value produced by the agreed method of valuation.

18 (3) If the court determines that the evidentiary value of an
19 appraisal is outweighed by the cost of the appraisal, the court,
20 after an evidentiary hearing, shall determine the fair market value
21 of the property and send notice to the parties of the value.

22 (4) If the court orders an appraisal, the court shall appoint
23 a disinterested real estate appraiser licensed in this state to
24 determine the fair market value of the property assuming sole
25 ownership of the fee simple estate. On completion of the appraisal,
26 the appraiser shall file a sworn or verified appraisal with the
27 court.

28 (5) If an appraisal is conducted under subsection (4), the
29 court shall, not later than 10 days after the appraisal is filed,

1 send notice to each party with a known address. The notice must
2 state all of the following:

3 (a) The appraised fair market value of the property.

4 (b) A statement that the appraisal is available at the clerk's
5 office.

6 (c) A statement that a party may file with the court an
7 objection to the appraisal not later than 30 days after the notice
8 is sent, stating the grounds for the objection.

9 (6) If an appraisal is filed with the court under subsection
10 (4), the court shall conduct a hearing to determine the fair market
11 value of the property not sooner than 30 days after a copy of the
12 notice of the appraisal is sent to each party under subsection (5),
13 whether or not an objection to the appraisal is filed under
14 subsection (5)(c). In addition to the court-ordered appraisal, the
15 court may consider any other evidence of fair market value assuming
16 sole ownership of the fee simple estate offered by a party.

17 (7) After a hearing under subsection (6), but before
18 considering the merits of the action to partition real property,
19 the court shall determine the fair market value of the property and
20 send notice to the parties of the value.

21 Sec. 3407. (1) If a cotenant requests partition by sale, the
22 court shall, after determining the value of the property under
23 section 3406, send notice to the parties that any cotenant except a
24 cotenant that requested partition by sale may buy all the interests
25 of the cotenants that requested partition by sale.

26 (2) Not later than 45 days after the notice is sent under
27 subsection (1), a cotenant except a cotenant that requested
28 partition by sale may give notice to the court that the cotenant
29 elects to buy all the interests of the cotenants that requested

1 partition by sale.

2 (3) The purchase price for each of the interests of a cotenant
3 that requested partition by sale is the value of the entire parcel
4 determined under section 3406 multiplied by the cotenant's
5 fractional ownership of the entire parcel.

6 (4) After the expiration of the period in subsection (2), the
7 following rules apply:

8 (a) If only 1 cotenant elects to buy all the interests of the
9 cotenants that requested partition by sale, the court shall notify
10 all the parties of that fact.

11 (b) If more than 1 cotenant elects to buy all the interests of
12 the cotenants that requested partition by sale, the court shall
13 allocate the right to buy those interests among the electing
14 cotenants based on each electing cotenant's existing fractional
15 ownership of the entire parcel divided by the total existing
16 fractional ownership of all cotenants electing to buy and send
17 notice to all the parties of that fact and of the price to be paid
18 by each electing cotenant.

19 (c) If no cotenant elects to buy all the interests of the
20 cotenants that requested partition by sale, the court shall send
21 notice to all the parties of that fact and resolve the action to
22 partition real property under section 3408(1) and (2).

23 (5) If the court sends notice to the parties under subsection
24 (4)(a) or (b), the court shall set a date, not sooner than 60 days
25 after the date the notice was sent, by which electing cotenants
26 must pay their apportioned price to the court. After this date, all
27 of the following rules apply:

28 (a) If all electing cotenants timely pay their apportioned
29 price to the court, the court shall issue an order reallocating all

1 the interests of the cotenants and disburse the amounts held by the
2 court to the persons entitled to them.

3 (b) If no electing cotenant timely pays the price apportioned
4 to the cotenant, the court shall resolve the action to partition
5 real property under section 3408(1) and (2) as if the interests of
6 the cotenants that requested partition by sale were not purchased.

7 (c) If 1 or more but not all of the electing cotenants fail to
8 pay the apportioned price on time, the court, on motion, shall give
9 notice to the electing cotenants that paid the apportioned price of
10 the interest remaining and the price for all the interest.

11 (6) Not later than 20 days after the court gives notice under
12 subsection (5)(c), any cotenant that paid the price apportioned to
13 the cotenant may elect to purchase all of the remaining interest by
14 paying the entire price for the remaining interest to the court.
15 After the 20-day period, the following rules apply:

16 (a) If only 1 cotenant pays the entire price for the remaining
17 interest, the court shall issue an order reallocating the remaining
18 interest to that cotenant. The court shall promptly issue an order
19 reallocating the interests of all of the cotenants and disburse the
20 amounts held by the court to the persons entitled to them.

21 (b) If no cotenant pays the entire price for the remaining
22 interest, the court shall resolve the action to partition real
23 property under section 3408(1) and (2) as if the interests of the
24 cotenants that requested partition by sale were not purchased.

25 (c) If more than 1 cotenant pays the entire price for the
26 remaining interest, the court shall reapportion the remaining
27 interest among the paying cotenants, based on each paying the
28 cotenant's original fractional ownership of the entire parcel
29 divided by the total original fractional ownership of all cotenants

1 that paid the entire price for the remaining interest. The court
2 shall promptly issue an order reallocating all of the cotenants'
3 interests, disburse the amounts held by the court to the persons
4 entitled to them, and promptly refund any excess payment held by
5 the court.

6 (7) Not later than 45 days after the court sends notice to the
7 parties under subsection (1), a cotenant entitled to buy an
8 interest under this section may request that the court authorize
9 the sale as part of the pending action of the interests of
10 cotenants named as defendants and served with the complaint but
11 that did not appear in the action.

12 (8) If the court receives a timely request under subsection
13 (7), the court, after a hearing, may deny the request or authorize
14 the requested additional sale on those terms as the court
15 determines are fair and reasonable, subject to both of the
16 following limitations:

17 (a) A sale authorized under this subsection may occur only
18 after the purchase prices for all interests subject to sale under
19 subsections (1) to (6) have been paid to the court and those
20 interests have been reallocated among the cotenants as provided in
21 subsections (1) to (6).

22 (b) The purchase price for the interest of a cotenant that did
23 not appear is based on the court's determination of value under
24 section 3406.

25 Sec. 3408. (1) If all the interests of all cotenants that
26 requested partition by sale are not purchased by other cotenants
27 under section 3407, or, if after conclusion of the buyout under
28 section 3407, a cotenant remains that has requested partition in
29 kind, the court shall order partition in kind unless the court,

1 after consideration of the factors listed in section 3409, finds
2 that partition in kind will result in great prejudice to the
3 cotenants as a group. In considering whether to order partition in
4 kind, the court shall approve a request by 2 or more parties to
5 have the requesting parties' individual interests aggregated.

6 (2) If the court does not order partition in kind under
7 subsection (1), the court shall order partition by sale under
8 section 3410 or, if no cotenant requested partition by sale, the
9 court shall dismiss the action.

10 (3) If the court orders partition in kind under subsection
11 (1), the court may require that 1 or more cotenants pay 1 or more
12 other cotenants so that the payments, taken together with the value
13 of the in-kind distributions to the cotenants, will make the
14 partition in kind just and proportionate in value to the fractional
15 interests held.

16 (4) If the court orders partition in kind, the court shall
17 allocate to the cotenants who are unknown, cannot be located, or
18 are the subject of a default judgment, if the cotenant's interests
19 were not represented under section 3407, a part of the property
20 representing the combined interests of these cotenants as
21 determined by the court, and this part of the property must remain
22 undivided.

23 Sec. 3409. (1) In determining whether partition in kind would
24 result in great prejudice to the cotenants as a group under section
25 3408, the court must consider all of the following:

26 (a) Whether it is practicable to divide the heirs property
27 among the cotenants.

28 (b) Whether partition in kind would apportion the property in
29 a way that the aggregate fair market value of the parcels resulting

1 from the division would be materially less than the value of the
2 property if it were sold as a whole, taking into account the
3 condition under which a court-ordered sale would likely occur.

4 (c) Evidence of the collective duration of ownership or
5 possession of the property by a cotenant and 1 or more predecessors
6 in title or predecessors in possession to the cotenant who are or
7 were relatives of the cotenant or each other.

8 (d) A cotenant's sentimental attachment to the property,
9 including any attachment arising because the property has ancestral
10 or other unique or special value to the cotenant.

11 (e) The lawful use being made of the property by a cotenant
12 and the degree to which the cotenant would be harmed if the
13 cotenant could not continue the same use of the property.

14 (f) The degree to which the cotenants have contributed their
15 pro rata share of the property taxes, insurance, and other expenses
16 associated with maintaining ownership of the property or have
17 contributed to the physical improvement, maintenance, or upkeep of
18 the property.

19 (g) Any other relevant factor.

20 (2) The court shall not consider any 1 factor in subsection
21 (1) to be dispositive without weighing the totality of all relevant
22 factors and circumstances.

23 Sec. 3410. (1) If the court orders a sale of heirs property,
24 the sale must be an open-market sale unless the court finds that a
25 sale by sealed bids or an auction would be more economically
26 advantageous and in the best interest of the cotenants as a group.

27 (2) If the court orders an open-market sale and the parties,
28 not later than 10 days after the entry of the order, agree on a
29 real estate broker licensed in this state to offer the property for

1 sale, the court shall appoint the real estate broker and establish
2 a reasonable commission. If the parties do not agree on a real
3 estate broker, the court shall appoint a disinterested real estate
4 broker licensed in this state to offer the property for sale and
5 shall establish a reasonable commission. The real estate broker
6 shall offer the property for sale in a commercially reasonable
7 manner at a price no lower than the determination of value and on
8 the terms and conditions established by the court.

9 (3) If the real estate broker appointed under subsection (2)
10 obtains, within a reasonable time, an offer to purchase the
11 property for not less than the determination of value, the real
12 estate broker must comply with the reporting requirements in
13 section 3411 and the sale may be completed in accordance with the
14 requirements of state law other than this chapter.

15 (4) If the real estate broker appointed under subsection (2)
16 does not obtain, within a reasonable time, an offer to purchase the
17 property for not less than the determination of value, the court,
18 after a hearing, may do any of the following:

19 (a) Approve the highest outstanding offer, if any.

20 (b) Redetermine the value of the property and order that the
21 property continue to be offered for an additional time.

22 (c) Order that the property be sold by sealed bids or at an
23 auction.

24 (5) If the court orders a sale by sealed bids or an auction,
25 the court shall set the terms and conditions of the sale. If the
26 court orders an auction, the auction must be conducted under
27 chapter 33.

28 (6) If a purchaser is entitled to a share of the proceeds of
29 the sale, the purchaser is entitled to a credit against the price

1 in an amount equal to the purchaser's share of the proceeds.

2 Sec. 3411. (1) Unless required to do so within a shorter time
3 under chapter 33, a real estate broker appointed under section
4 3410(2) to offer heirs property for open-market sale shall file a
5 report with the court not later than 7 days after receiving an
6 offer to purchase the property for not less than the value
7 determined under section 3406 or 3410.

8 (2) The report required by subsection (1) must contain all of
9 the following information:

10 (a) A description of the property to be sold to each buyer.

11 (b) The name of each buyer.

12 (c) The proposed purchase price.

13 (d) The terms and conditions of the proposed sale, including
14 the terms of any owner financing.

15 (e) The amounts to be paid to lienholders.

16 (f) A statement of contractual or other arrangements or
17 conditions of the broker's commission.

18 (g) Other material facts relevant to the sale.

19 Sec. 3412. In applying and construing this chapter,
20 consideration must be given to the need to promote uniformity of
21 the law with respect to its subject matter among states that enact
22 the uniform partition of heirs property act.

23 Sec. 3413. This chapter modifies, limits, or supersedes the
24 federal electronic signatures in global and national commerce act,
25 15 USC 7001 to 7006, but does not modify, limit, or supersede
26 section 7001(c), or authorize electronic delivery of any of the
27 notices described in section 7003(b) of the federal electronic
28 signatures in global and national commerce act, 15 USC 7001 and
29 7003.