CHAPTER 61

Partition

ARTICLE 1

General Provisions

Editor's Note

2016 Act No. 153, Section 2, provides as follows:

"SECTION 2. Sections 15‑61‑10 through 15‑61‑110 are designated as Article 1, Chapter 61, Title 15, to be entitled 'General Provisions'."

**SECTION 15‑61‑10.** Partition is compellable between certain joint tenants and tenants in common.

Section effective until January 1, 2017. See, also, section 15‑61‑10 effective January 1, 2017.

 All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

HISTORY: 1962 Code Section 10‑2201; 1952 Code Section 10‑2201; 1942 Code Section 8826; 1932 Code Section 8826; Civ. C. '22 Section 5292; Civ. C. '12 Section 3522; Civ. C. '02 Section 2436; G. S. 1829; R. S. 1948; 1712 (2) 471, 474.

**SECTION 15‑61‑10.** Partition is compellable between certain joint tenants and tenants in common; Determination if property is heirs' property.

Section effective January 1, 2017. See, also, section 15‑61‑10 effective until January 1, 2017.

 (A) All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

 (B) In an action to partition real property, upon motion of a party or from statements contained in the pleadings, a court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under Article 3, Chapter 61, Title 15, unless all of the cotenants otherwise agree in a record.

HISTORY: 1962 Code Section 10‑2201; 1952 Code Section 10‑2201; 1942 Code Section 8826; 1932 Code Section 8826; Civ. C. '22 Section 5292; Civ. C. '12 Section 3522; Civ. C. '02 Section 2436; G. S. 1829; R. S. 1948; 1712 (2) 471, 474; 2016 Act No. 153 (H.3325), Section 3, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

Effect of Amendment

2016 Act No. 153, Section 3, added paragraph identifier (A), and added (B), relating to heirs' property.

**SECTION 15‑61‑11.** Waiver of partition of land which is site of electric generating plant.

 Notwithstanding the provisions of Section 15‑61‑10, the right to compel judicial partition of lands may be waived by tenants‑in‑common owning land upon which is to be constructed or has been constructed an electric generating plant producing electric energy for sale or distribution within or without this State, provided the effective period of such waiver does not extend beyond the operating life of the generating plant. If notice is given by the recording of a deed or instrument of conveyance creating a tenancy‑in‑common and containing an expression of agreement to waive the right of judicial partition, then such agreement shall run with the land and shall be binding upon the heirs, successors and assigns of any tenant‑in‑common so bound. The power and right to enter into agreements to waive the right of judicial partition authorized by this section shall be in addition to any such powers and rights already authorized by the laws of South Carolina.

HISTORY: 1979 Act No. 176, Section 13.

**SECTION 15‑61‑20.** Only parties to proceeding are affected by partition.

 No severance or partition shall be prejudicial or hurtful to any person or persons, their heirs or successors, other than such as are parties unto the partition, their executors and assigns.

HISTORY: 1962 Code Section 10‑2202; 1952 Code Section 10‑2202; 1942 Code Section 8826; 1932 Code Section 8826; Civ. C. '22 Section 5292; Civ. C. '12 Section 3522; Civ. C. '02 Section 2436; G. S. 1829; R. S. 1948; 1712 (2) 471, 474.

**SECTION 15‑61‑25.** Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure.

 (A) For the purposes of this section, "joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

 (B) In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.

 (C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.

 (D) After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty‑five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

 (E) In the event that the nonpetitioning joint tenants or tenants in common fail to pay the purchase price as provided in subsection (D) of this section, the court shall proceed according to its traditional practices in partition sales.

HISTORY: 2006 Act No. 302, Section 1, eff May 25, 2006, applicable to all petitions for partition filed after that date.

**SECTION 15‑61‑30.** State as owner of escheated interest is not necessary party.

 If one having a vested interest in real estate as tenant in common dies without a will and without known heirs partition proceedings may be maintained against unknown heirs without making the State a party to the action, and a sale and conveyance under a decree in the cause shall vest such interest as may be subject to escheat under the provisions of this chapter in the purchaser, provided that in such decree provisions be made for the payment of the divisible share of such deceased person in the proceeds of sale, if any, to the State Treasurer, to be paid into the State Treasury, subject to the right of the heir or heirs to recover such share by proper proceedings and on issue tried in the court of common pleas.

HISTORY: 1962 Code Section 10‑2203; 1952 Code Section 10‑2203; 1942 Code Section 8830; 1932 Code Section 8830; 1924 (33) 1090.

**SECTION 15‑61‑40.** Validation of certain titles.

 All titles to real estate conveyed prior to March 18 1924 under order of the court in partition cases when one or more of the parties in interest had died without heirs or other disposition of the estate are hereby validated in so far as they may be affected by the provisions of this chapter.

HISTORY: 1962 Code Section 10‑2204; 1952 Code Section 10‑2204; 1942 Code Section 8830; 1932 Code Section 8830; 1924 (33) 1090.

**SECTION 15‑61‑50.** Jurisdiction to partition in kind or by sale.

 The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.

HISTORY: 1962 Code Section 10‑2205; 1952 Code Section 10‑2205; 1942 Code Section 8827; 1932 Code Section 8827; Civ. C. '22 Section 5293; Civ. C. '12 Section 3523; Civ. C. '02 Section 2437; G. S. 1830; R. S. 1949; 1882 (17) 982; 1885 (19) 314.

**SECTION 15‑61‑100.** Sale may be ordered without writ upon testimony taken.

Section effective until January 1, 2017. See, also, section 15‑61‑100 effective January 1, 2017.

 Nothing in Sections 15‑61‑60 to 15‑61‑90 shall be construed to affect the power of the court of common pleas to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties.

HISTORY: 1962 Code Section 10‑2210; 1952 Code Section 10‑2210; 1942 Code Section 8829; 1932 Code Section 8829; Civ. C. '22 Section 5295; Civ. C. '12 Section 3525; Civ. C. '02 Section 2439; R. S. 1951; 1886 (19) 506.

**SECTION 15‑61‑100.** Sale may be ordered without writ upon testimony taken.

Section effective January 1, 2017. See, also, section 15‑61‑100 effective until January 1, 2017.

 Nothing in Rule 71, South Carolina Rules of Civil Procedure, concerning partition actions, shall be construed to affect the power of a court hearing a partition action to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties.

HISTORY: 1962 Code Section 10‑2210; 1952 Code Section 10‑2210; 1942 Code Section 8829; 1932 Code Section 8829; Civ. C. '22 Section 5295; Civ. C. '12 Section 3525; Civ. C. '02 Section 2439; R. S. 1951; 1886 (19) 506; 2016 Act No. 153 (H.3325), Section 4, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

Effect of Amendment

2016 Act No. 153, Section 4, substituted "Nothing in Rule 71, South Carolina Rules of Civil Procedure, concerning partition actions, shall be construed to affect the power of a court hearing a partition action" for "Nothing in Sections 15‑61‑60 to 15‑61‑90 shall be construed to affect the power of the court of common pleas" in the first sentence.

**SECTION 15‑61‑110.** Attorneys' fees.

 The court of common pleas may fix attorneys' fees in all partition proceedings and, as may be equitable, assess such fees against any or all of the parties in interest.

HISTORY: 1962 Code Section 10‑2211; 1952 Code Section 10‑2211; 1949 (46) 123.

ARTICLE 3

Clementa C. Pinckney Uniform Partition of Heirs' Property Act

**SECTION 15‑61‑310.** Short title.

Section effective January 1, 2017.

 This article may be cited as the "Clementa C. Pinckney Uniform Partition of Heirs' Property Act".

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑320.** Definitions.

Section effective January 1, 2017.

 As used in this article:

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

 (2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this State, but who is not the other individual's ascendant or descendant.

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

 (4) "Determination of value" means a court order determining the fair market value of heirs' property under Section 15‑61‑360 or Section 15‑61‑400 or adopting the valuation of the property agreed to by all cotenants.

 (5) "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:

 (a) there is no agreement in a record binding all of the cotenants that governs the partition of the property;

 (b) one or more of the cotenants acquired title from a relative, whether living or deceased; and

 (c) any of the following applies:

 (i) twenty percent or more of the interests are held by cotenants who are relatives;

 (ii) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

 (iii) twenty percent or more of the cotenants are relatives.

 (6) "Manifest prejudice" or "Manifest injury" means a result that is obviously unfair or shocking to the conscience and is direct, obvious, and observable when considering the factors under Section 15‑61‑390(A).

 (7) "Partition by allotment" means a court‑ordered partition of the heirs' property where ownership to all or a portion of the heirs' property is granted to one or more cotenants proportionate in value to their interests in the entire heirs' property parcel, with adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property.

 (8) "Partition by sale" means a court‑ordered sale of the entire heirs' property, whether by auction, sealed bids, or open‑market sale, conducted under Section 15‑61‑400.

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

 (10) "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.

 (11) "Relative" means an ascendant, descendant, or collateral, or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than this article, and for purposes of this article, who owned or owns an interest in the heirs' property.

 (12) "Time computed" means computation of time as prescribed by this section, which shall be governed by Rule 6, South Carolina Rules of Civil Procedure, so that when the period of time prescribed or allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are excluded in the computation.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑330.** Preliminary determination whether property is heirs' property; construction with Article 1.

Section effective January 1, 2017.

 (A) In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

 (B) This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑340.** Service of pleading; notice by publication.

Section effective January 1, 2017.

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

 (B) If the plaintiff in a partition action seeks notice by publication and the court determines that notice by publication is required and, pursuant to Section 15‑61‑330, that the property may be heirs' property, the plaintiff, not later than ten days after the determination of the court, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action in addition to compliance with the requirements for notice by publication. The sign must 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, through its order, the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑350.** Sale may be ordered without writ upon testimony taken.

Section effective January 1, 2017.

 Pursuant to Rule 71, South Carolina Rules of Civil Procedure, this article does not affect a court's power, in partition proceedings, to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such a writ. A court may, in all partition proceedings, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind or partition by allotment among the parties is practicable or expedient and, when such cannot be fairly and equally made, may order the sale of the property and a division of the proceeds according to the rights of the parties. If a court issues a writ of partition and appoints commissioners pursuant to Rule 71, South Carolina Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Rule 71, must be disinterested and impartial and not a party to or a participant in the action.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑360.** Determination of value of property.

Section effective January 1, 2017.

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

 (B) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed 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 establish by order the fair market value of the property. The court shall send notice of the order to the party that filed the partition action. Within one week from the date notice was sent, the party that filed the partition action shall send a copy of the order establishing the fair market value of the property to all other cotenants with a known address.

 (D) If a court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this State to determine the fair market value of the property assuming sole ownership of the fee simple estate. On appointment of the appraiser, the court shall order the appraiser to file with the court a sworn or verified appraisal upon its completion and the court shall send to the party that filed the partition action a notice of the appraisal filing 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 no later than thirty days after the notice is sent, stating the grounds for the objection.

 (E) If an appraisal is filed pursuant to subsection (D), within one week from the date the notice was sent, the party that filed the partition action shall send notice to all other cotenants with a known address, 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 no later than thirty days after the notice is sent stating the grounds for the objection.

 (F) 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 sixty days after a copy of the notice of the appraisal is sent to each party under subsections (D) and (E), whether or not an objection to the appraisal is filed. In addition to the court‑ordered appraisal, the court may consider any other evidence of value offered by a party.

 (G) After a hearing under subsection (F), but before considering the merits of the partition action, the court, by order, shall determine the fair market value of the property. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send copies of the fair market value order to all other cotenants with a known address.

 (H) The court, in its discretion, shall determine allocation of payment from the parties to cover the costs of the appraisal.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑370.** Cotenant requesting partition by sale.

Section effective January 1, 2017.

 (A) If any cotenant requests partition by sale, after the determination of value pursuant to Section 15‑61‑360, the party filing the partition action, after receipt of the value information from the clerk's office, shall send notice to the parties that any cotenant, except a cotenant that requested partition by sale, may buy all of the interests of the cotenants that requested partition by sale.

 (B) A cotenant, except a cotenant that requested partition by sale, who is interested in purchasing the interests of the cotenants that requested partition by sale, shall notify the court of that interest no later than ten days prior to the date set for the partition trial. A cotenant that did not request partition by sale must be allowed to purchase the interests of any cotenant who requested a partition by sale, as provided in this article, whether default has been entered against the cotenant or not.

 (C) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined pursuant to Section 15‑61‑360 multiplied by the cotenant's fractional ownership of the entire parcel.

 (D) After the expiration of the period in subsection (B), the following requirements apply:

 (1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action of that fact. After receiving notice from the court, the party filing the partition action shall notify all the parties of that same fact.

 (2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court, by order, shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send a copy of the order showing the price to be paid by each electing cotenant to all other cotenants with a known address.

 (3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action to send notice to all the parties of that fact and the court shall resolve the partition action, by order, pursuant to Section 15‑61‑380.

 (E) If notices are sent to the parties under subsection (D)(1) or (2), the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following requirements apply:

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

 (2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action pursuant to Section 15‑61‑380(A) and (B), as if the interests of the cotenants that requested partition by sale were not purchased.

 (3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall order the party so moving to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all the interests.

 (F) Not later than twenty days after notice is sent pursuant to subsection (E)(3), any cotenant who paid may elect to purchase all of the remaining interest by paying the entire price into the court. After an additional twenty‑day period, the following requirements apply:

 (1) If only one cotenant pays the entire price for the remaining interests, the court shall issue an order reallocating the remaining interests to that cotenant and disburse the amounts held by it to the persons entitled to them.

 (2) If no cotenant pays the entire price for the remaining interests, the court shall resolve the partition action pursuant to Section 15‑61‑380, 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 interests, the court shall reapportion the remaining interests 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 interests. 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 forty days after the party filing the partition action 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 a sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint, but that did not appear in the action.

 (H) If the court receives a timely request under subsection (G), the court, after a 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.

 (2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value pursuant to Section 15‑61‑360.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑380.** Partition in kind or by allotment.

Section effective January 1, 2017.

 (A) If all the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 15‑61‑370 or if, after conclusion of the buyout pursuant to Section 15‑61‑370, a cotenant remains that has requested a partition in kind or a partition by allotment, the court shall order a partition in kind or a partition by allotment, unless the court, after consideration of the factors listed in Section 15‑61‑390, finds that partition in kind or partition by allotment may result in manifest prejudice or manifest injury to the cotenants as a group. In considering whether to order partition in kind or partition by allotment, 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 or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15‑61‑400 or, if no cotenant requested partition by sale, the court shall dismiss the action.

 (C) If the court orders partition in kind or partition by allotment pursuant to subsection (A), the court may require that one or more cotenants pay one or more of the 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 or the partition by allotment just and proportionate in value to the fractional interests held.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑390.** Determination of manifest prejudice or injury to cotenants as a group.

Section effective January 1, 2017.

 (A) In determining pursuant to Section 15‑61‑380(A) whether partition in kind or partition by allotment would result in manifest prejudice or manifest injury 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 or partition by allotment 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 contributed to the physical improvement, maintenance, or upkeep of the property; and

 (7) any other relevant factor.

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

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑400.** Sale of heirs' property; open‑market sale; sale by sealed bids.

Section effective January 1, 2017.

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

 (B) If the court orders an open‑market sale and the parties, not later than thirty days after the entry of the order, agree on a real estate broker licensed in this State to offer the property for sale, the court, upon consultation with the parties, 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 this State 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.

 (C) If a 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 comply with the reporting requirements in Section 15‑61‑410;

 (2) the sale may be completed in accordance with state law other than this article; and

 (3) the commission of the real estate broker must be paid from the proceeds of the sale.

 (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 time; or

 (3) order that the property be sold by sealed bids or at an auction.

 (E) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted pursuant to procedures governing judicial sales and auctions.

 (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.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑410.** Report of broker appointed to offer heirs' property for open‑market sale.

Section effective January 1, 2017.

 (A) Unless required otherwise to do so within a shorter time, a broker appointed under Section 15‑61‑400, to offer heirs' property for open‑market sale shall file a report with the court not later than ten days after receiving an offer to purchase the property for at least the value determined pursuant to Section 15‑61‑360 or 15‑61‑400.

 (B) The report required by subsection (A) must contain the following information:

 (1) a description of the property to be sold to each buyer;

 (2) the name of each buyer;

 (3) the proposed purchase price;

 (4) the terms and conditions of the proposed sale, including the terms of any owner financing;

 (5) the amounts to be paid to lienholders;

 (6) a statement of contractual or other arrangements or conditions of the broker's commission; and

 (7) other material facts relevant to the sale.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."

**SECTION 15‑61‑420.** Construction of article.

Section effective January 1, 2017.

 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b), except to the extent that South Carolina law, rules, and regulations so authorize.

HISTORY: 2016 Act No. 153 (H.3325), Section 1, eff January 1, 2017.

Editor's Note

2016 Act No. 153, Section 6, provides as follows:

"SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date."