

South Carolina General Assembly
121st Session, 2015-2016

A153, R158, H3325

STATUS INFORMATION

General Bill

Sponsors: Reps. J.E. Smith, Hodges, Weeks, Whipper, Mitchell, Govan and Gilliard

Document Path: I:\council\bill\ncd\11043cz15.docx

Introduced in the House on January 15, 2015

Introduced in the Senate on May 13, 2015

Last Amended on March 8, 2016

Passed by the General Assembly on March 16, 2016

Governor's Action: April 21, 2016, Signed

Summary: Uniform Partition of Heirs Property Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/15/2015	House	Introduced and read first time (House Journal-page 324)
1/15/2015	House	Referred to Committee on Judiciary (House Journal-page 324)
1/27/2015	House	Member(s) request name added as sponsor: Hodges
4/22/2015	House	Member(s) request name added as sponsor: Weeks, Whipper
5/6/2015	House	Committee report: Favorable with amendment Judiciary (House Journal-page 39)
5/7/2015	House	Member(s) request name added as sponsor: Mitchell, Govan
5/12/2015	House	Member(s) request name added as sponsor: Gilliard
5/12/2015	House	Amended (House Journal-page 24)
5/12/2015	House	Read second time (House Journal-page 24)
5/12/2015	House	Roll call Yeas-104 Nays-0 (House Journal-page 34)
5/13/2015	House	Read third time and sent to Senate (House Journal-page 13)
5/13/2015	Senate	Introduced and read first time (Senate Journal-page 8)
5/13/2015	Senate	Referred to Committee on Judiciary (Senate Journal-page 8)
5/15/2015	Senate	Referred to Subcommittee: Malloy (ch), Massey, S.Martin, Bennett, Johnson
1/19/2016	Senate	Referred to Subcommittee: Malloy (ch), Massey, Bennett, Johnson, Thurmond
3/2/2016	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 8)
3/3/2016		Scrivener's error corrected
3/8/2016	Senate	Committee Amendment Adopted (Senate Journal-page 13)
3/8/2016	Senate	Read second time (Senate Journal-page 13)
3/8/2016	Senate	Roll call Ayes-34 Nays-1 (Senate Journal-page 13)
3/9/2016		Scrivener's error corrected
3/9/2016	Senate	Read third time and returned to House with amendments (Senate Journal-page 9)
3/16/2016	House	Read third time and enrolled (House Journal-page 85)
3/16/2016	House	Roll call Yeas-100 Nays-0 (House Journal-page 86)
4/19/2016		Ratified R 158
4/21/2016		Signed By Governor
4/27/2016		Effective date 01/01/17
5/2/2016		Act No. 153

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(A153, R158, H3325)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 61, TITLE 15 SO AS TO ENACT THE “CLEMENTA C. PINCKNEY UNIFORM PARTITION OF HEIRS’ PROPERTY ACT”; TO DEFINE NECESSARY TERMS; TO PROVIDE FOR A PRELIMINARY HEARING TO DETERMINE WHETHER THE PROPERTY IN AN ACTION TO PARTITION REAL PROPERTY IS HEIRS’ PROPERTY; TO PROVIDE FOR NOTICE BY PUBLICATION IN A PARTITION ACTION; TO PROVIDE PROCEDURES FOR A COURT TO FOLLOW IN DETERMINING THE VALUE OF THE PROPERTY AND FACTORS FOR A COURT TO CONSIDER FOR DIFFERENT TYPES OF PARTITIONS; TO PROVIDE FOR OPEN-MARKET SALES, SEALED BIDS, OR AUCTIONS, TO DESIGNATE THE EXISTING PROVISIONS OF CHAPTER 61 AS ARTICLE 1; TO AMEND SECTION 15-61-10, RELATING TO PARTITION ACTIONS, SO AS TO PROVIDE FOR A COURT HEARING TO DETERMINE IF THE PARTITION ACTION CONCERNS HEIRS’ PROPERTY; AND TO AMEND SECTION 15-61-100, RELATING TO WRITS OF PARTITION, SO AS TO DELETE OBSOLETE REFERENCES.

Be it enacted by the General Assembly of the State of South Carolina:

Clementa C. Pinckney Uniform Partition of Heirs’ Property Act enacted

SECTION 1. Chapter 61, Title 15 of the 1976 Code is amended by adding:

“Article 3

Clementa C. Pinckney Uniform Partition of Heirs’ Property Act

Section 15-61-310. This article may be cited as the ‘Clementa C. Pinckney Uniform Partition of Heirs’ Property Act’.

Section 15-61-320. 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.

Section 15-61-330. (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.

Section 15-61-340. (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.

Section 15-61-350. 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.

Section 15-61-360. (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.

Section 15-61-370. (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.

Section 15-61-380. (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.

Section 15-61-390. (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.

Section 15-61-400. (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.

Section 15-61-410. (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.

Section 15-61-420. 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.”

Sections designated

SECTION 2. Sections 15-61-10 through 15-61-110 are designated as Article 1, Chapter 61, Title 15, to be entitled “General Provisions”.

Court shall determine if property is heirs’ property

SECTION 3. Section 15-61-10 of the 1976 Code is amended to read:

“Section 15-61-10. (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.”

Rule 71, South Carolina Rules of Civil Procedure shall not affect the power of a court to hear a partition action

SECTION 4. Section 15-61-100 of the 1976 Code is amended to read:

“Section 15-61-100. 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.”

Severability Clause

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time Effective

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

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.