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CHAPTER 61

Partition

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

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 15‑61‑11.** 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.

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 15‑61‑110.** 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.