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; Determination if property is heirs’ property.

(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.

CROSS REFERENCES

Judicial sales, generally, see Sections 15‑39‑610 et seq.

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Partition of estate property when two or more heirs or devisees are entitled to distribution of undivided interests, see Section 62‑3‑911.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k13.

Partition 13.

C.J.S. Partition Section 33.

RESEARCH REFERENCES

Encyclopedias

130 Am. Jur. Trials 95, Partition of Property.

S.C. Jur. Cotenancies Section 47, Partition.

S.C. Jur. Lis Pendens Section 23, Partition Actions.

S.C. Jur. Reference Section 13, Specific Matters.

Forms

Am. Jur. Pl. & Pr. Forms Partition Section 1 , Introductory Comments.

South Carolina Legal and Business Forms Section 11:1 , Legal Principles.

Treatises and Practice Aids

4 Causes of Action 2d 443, Cause of Action for Partition of Jointly Owned Real Property Following Termination of Marital Relationship.

LAW REVIEW AND JOURNAL COMMENTARIES

Cotenancies, Estates of in South Carolina. 11 SCLQ 520.

“Heirs’ Property” The Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

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1. In general

As to effect of upsetting commissioner’s report, see Parrott v Barrett, 81 SC 255, 62 SE 241 (1908). Aldrich v Aldrich, 75 SC 369, 55 SE 887 (1906). Bennett v Floyd, 237 SC 64, 115 SE2d 659 (1960).

As to estates in entirety, see Green v Cannady, 77 SC 193, 57 SE 832 (1907). Windham v Howell, 68 SC 478, 47 SE 715 (1904). Garret v Weinberg, 43 SC 36, 20 SE 756 (1895). Horne v McRae, 53 SC 51, 30 SE 701 (1898). Gilreath v Furman, 57 SC 289, 35 SE 516 (1900).

Partition is not available where joint estate arises out of illegal transaction. Milhous v Sally, 43 SC 318, 21 SE 268, 885 (1895). Fricks v Lewis, 26 SC 237, 1 SE 884 (1887).

Partition and accounting was appropriate remedy for dispute regarding ownership of condominium property; tenants did not clearly establish the specific terms of their alleged contract for the purchase of co‑tenant’s interest in the condominium, tenants requested partition as an alternative remedy, and co‑tenant also requested partition as a remedy. Fesmire v. Digh (S.C.App. 2009) 385 S.C. 296, 683 S.E.2d 803. Partition 14

Broad authority conferred upon court to partition in kind or by allotment by this chapter. Few v. Few (S.C. 1963) 242 S.C. 433, 131 S.E.2d 248.

Cited in Jeffords v. Thornal (S.C. 1944) 204 S.C. 257, 29 S.E.2d 116.

Where a will provided that lands devised jointly to the testator’s wife and children should not be sold until all the tenants agreed with the testator’s sister, it was held that this section [former Code 1962 Section 10‑2201] states a rule of public policy, and the restriction is void both by statute and by common law as an unreasonable limitation on the power of alienation. McCravey v. Otts (S.C. 1912) 90 S.C. 447, 74 S.E. 142.

Partition is not available where testator directs estate to be kept together. Callahan v. Callahan (S.C. 1892) 36 S.C. 454, 15 S.E. 727.

Partition is demanded as common right. Atkinson v. Jackson (S.C. 1886) 24 S.C. 594.

2. In kind partition

The Supreme Court’s recognition that in kind partitions are appropriate only where they may be made fairly and impartially without any injury to any of the parties, does not vary the statutory preference for in kind partition. Thus, the party seeking a partition by sale carries the burden of proof to show that partition in kind is not practicable or expedient. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897. Partition 77(1); Partition 77(4)

3. Partition agreements

Partition by parol agreement may be good and binding. Haughabaugh v Honald, 3 Brev (5 SCL) 97. Goodhue v Barnwell, Rice Eq (14 SC Eq) 198. Kennemore v Kennemore, 26 SC 251, 1 SE 881 (1887). Rountree v Lane, 32 SC 160, 10 SE 941 (1890).

One who is joined in execution of a deed of partition and retains a portion of the land assigned him, cannot ask partition at the hands of the court while claiming under the deed. Brickle v. Leach (S.C. 1899) 55 S.C. 510, 33 S.E. 720. Partition 22

A conveyance by one cotenant does not operate to prejudice of other cotenants. Young v. Edwards (S.C. 1890) 33 S.C. 404, 11 S.E. 1066, 26 Am.St.Rep. 689.

A grant by one tenant in common of a right of way gives right to grantee to have grantor’s share laid off in severalty. Charleston, C. & C.R. Co. v. Leech (S.C. 1890) 33 S.C. 175, 11 S.E. 631.

An agreement for partition signed by married women and their husbands and others in interest, is enforceable. Smith v. Tanner (S.C. 1890) 32 S.C. 259, 10 S.E. 1008.

Partition by parol agreement by husband cannot prevail against wife. Jones v. Reeves (S.C. 1853) 6 Rich. 132.

4. Pleading and practice—In general

Partition of intestate’s property should not be brought within the year (now six months) after his death and without making administrator party. Williams v Mallory, 33 SC 601, 11 SE 1068 (1890). Geiger v Geiger, 57 SC 521, 35 SE 1031 (1900). Ex parte Worley, 49 SC 41, 26 SE 949 (1897).

Proceedings for partition and homestead at same time are inconsistent. Williams v Mallory, 33 SC 601, 11 SE 1068 (1890). Geiger v Geiger, 57 SC 521, 35 SE 1031 (1900). Ex parte Worley, 49 SC 41, 26 SE 949 (1897).

Sibling’s claim for an accounting was barred by issue preclusion, in action for partition of property and an accounting; sibling had filed a petition in probate court that sought an accounting for expenses incurred and for rent from sister for the time sibling was allegedly denied access to property, the probate court action raised the same issues that sibling raised in the trial court, and the probate court dismissed the action with prejudice. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Judgment 640; Judgment 654; Judgment 715(2)

Although Rules 17 and 71 of the South Carolina Rules of Civil Procedure address appropriate procedure in partition actions, these Rules do not replace the repealed statutory procedure for effectuating the actual partition. The prior practice under repealed Sections 15‑61‑60 to 15‑61‑90 is preserved and the lower court has the inherent authority to appoint commissioners to aid it in effectuating a partition. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897.

A duly instituted partition action under Section 15‑61‑10 cannot be bootstrapped into an adverse claims action under Section 15‑67‑10 absent compliance with all the statutory provisions applicable to the latter. Bultman v. Barber (S.C. 1981) 277 S.C. 5, 281 S.E.2d 791. Adverse Possession 10

Appointment of receiver. In a suit to partition real property a court of equity is empowered under certain circumstances to appoint a receiver. Turner v. Byars (S.C. 1954) 226 S.C. 289, 85 S.E.2d 100. Partition 53

But where the land is divided in kind, the wife’s dower attaches to the portion assigned him or his alienee. Gaffney v. Jefferies (S.C. 1901) 59 S.C. 565, 38 S.E. 216, 82 Am.St.Rep. 860.

Partition paramount to dower of cotenant’s wife. The right to partition is paramount to the right of a wife of a cotenant to dower; hence, sale for partition will bar her right. Holley v. Glover (S.C. 1892) 36 S.C. 404, 15 S.E. 605, 31 Am.St.Rep. 883.

Premature action for partition. Action for partition premature while two of the cotenants hold possession under an unexpired lease. Cannon v. Lomax (S.C. 1888) 29 S.C. 369, 7 S.E. 529, 13 Am.St.Rep. 739.

Partition between wife and children. Partition was ordered during lifetime of husband and wife between her and their children then living, where the title was in her and such children and those to be born. Mellichamp v. Mellichamp (S.C. 1888) 28 S.C. 125, 5 S.E. 333.

Lands lying in several counties may be partitioned in same proceeding in one county. Daniels v. Moses (S.C. 1879) 12 S.C. 130.

Joint estate for joint lives may be partitioned. Reilly v. Whipple (S.C. 1870) 2 S.C. 277.

5. —— Trial, pleading and practice

Where the issue of title is sufficiently raised by the pleading, there is no necessity for the court to frame an issue. Tyler v Williams, 53 SC 367, 31 SE 298 (1898). Barnes v Rodgers, 54 SC 115, 31 SE 885 (1899). Sumner v Harrison, 54 SC 353, 32 SE 572 (1899).

Title claimed by defendant must be tried by jury before partition can be considered. Capell v. Moses (S.C. 1892) 36 S.C. 559, 15 S.E. 711.

Where a defendant in partition claims an independent title, his claim must be first adjudicated. Brock v. Nelson (S.C. 1888) 29 S.C. 49, 6 S.E. 899.

6. —— Parties, pleading and practice

Adult children may have partition of homestead assigned to widow, during her life. Ex parte Worley, 54 SC 208, 32 SE 307 (1899). Yoe v Hanvey, 25 SC 94 (1886).

Purchaser of remainder may compel partition with other tenants in common during lifetime of his life tenant. Lorick & Lowrance v McCreery, 20 SC 424 (1884). Varn v Varn, 32 SC 77, 10 SE 829 (1890).

The only child of a testator born after the making of a will and receiving nothing thereunder is not a necessary party to a suit to partition testator’s real property. Weinberg v. Weinberg (S.C. 1946) 208 S.C. 157, 37 S.E.2d 507.

Bank suing as one of tenants in common of fee and alleging its consent as owner of life estate, could sue for partition, where adult remaindermen consented and rights of infant remaindermen were properly protected. South Carolina Sav. Bank v. Stansell (S.C. 1931) 160 S.C. 81, 158 S.E. 131. Partition 12(5)

Mortgagee has equitable interest which should be protected in partition suit by making him party thereto. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113. Partition 46.1

Under this section [former Code 1962 Section 10‑2201], the better and safer practice is to make all incumbrances parties to partition proceedings to prevent multiplicity of suits, protect rights of such incumbrancers, and to preserve value of undivided interest as security. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113.

Tenant in common who has conveyed his interest is not a necessary party. McNish v. Guerard (S.C. 1850).

7. —— Disposition of proceeds, pleading and practice

Sister was required to pay sibling $2,764.31 for sibling’s share of property, in sibling’s action for partition and an accounting; sister was entitled to a credit for improvements she made to the property. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Partition 85

With respect to the disposition of the proceeds of a partition sale of property incumbered by a life estate, the owner of the life estate is not entitled to have the present value of such estate paid him, but only the income from the proceeds during the continuance of such estate. Cox v. Cox (S.C. 1974) 262 S.C. 8, 202 S.E.2d 6.

Where the property is sold for partition, the proceeds should be invested for the benefit of the owner of the life estate and the income paid him until the falling in of such estate, upon which event the proceeds should be disbursed among those entitled thereto. Cox v. Cox (S.C. 1974) 262 S.C. 8, 202 S.E.2d 6.

In an action for partition brought by a tenant in common of the fee and the owner of a life estate in the entire property against the other remaindermen, some of whom were minors, in the absence of facts showing that the best interests of the minors would be served by disposing of the life estate, the cash value thereof could not be paid to the life tenant out of the interests of the minors; but the entire interests in which the minors are remaindermen must be invested and the income paid to the owner of the life estate until the falling in of such estate, upon which event the proceeds will be disbursed among those entitled thereto. Cox v. Cox (S.C. 1974) 262 S.C. 8, 202 S.E.2d 6.

8. Tenancy in common

Deed by which wife conveyed property to herself and husband “for and during their joint lives and upon the death of either of them, then to the survivor of them” created a joint tenancy rather than a tenancy in common with indestructible right of survivorship, and thus property was subject to partition, even though language of deed was not identical to language in statute providing conclusive method of creating joint tenancy; statute specified that it was in addition to any other methods for creating a joint tenancy, deed satisfied the four common law unities and unambiguously created a right of survivorship, and deed would be construed in favor of a more marketable estate. Smith v. Rucker (S.C.App. 2004) 357 S.C. 532, 593 S.E.2d 497, rehearing denied, certiorari granted, reversed 366 S.C. 546, 623 S.E.2d 644. Marriage And Cohabitation 710; Partition 13

9. Domestic disputes

Partition is compellable among co‑tenants as a matter of right and is not suspended by an interest in or a right to use the property; accordingly, in an appeal from an order awarding exclusive use of the parties’ former marital residence to the father and denying the mother’s request for custody of the children, the family court could not issue an order that would thwart the right of the circuit court to partition the residence, however, the family court had jurisdiction to award exclusive use of the home to the father as an incident of child support. Thompson v. Brunson (S.C.App. 1984) 283 S.C. 221, 321 S.E.2d 622.

10. Liens

As to estimate of rents and profits, see Volentine v Johnson, 1 Hill Eq (10 SC Eq) 49. Lyles v Lyles, 1 Hill Eq (10 SC Eq) 76. Backler v Farrow, 2 Hill Eq (11 SC Eq) 11. Woodward v Clarke, 4 Strob Eq (23 SC Eq) 167. Jones v Massey, 9 SC 376 (1878). Jones v Massey, 14 SC 292 (1880). Scaife v Thomson, 15 SC 337 (1881). McCreary v Burns, 17 SC 45 (1882). Annely v DeSaussure, 17 SC 389 (1882). Jacobs v Bush, 17 SC 594 (1882). Sutton v Sutton, 26 SC 33, 1 SE 19 (1886). Annely v DeSaussure, 26 SC 497, 2 SE 490 (1887). McCants v McCants, 51 SC 503, 29 SE 387 (1898). McGee v Hall, 28 SC 562, 6 SE 566 (1888).

Statutory lien for purchase money attached under act of 1791 not affected by repeal of that act. Daniels v Moses, 12 SC 130 (1879). Chalmers v Jones, 23 SC 463 (1885).

Under this section [former Code 1962 Section 10‑2201], on sale of land in partition proceedings, any prior lien against undivided interest of any cotenant is transferred to share of proceeds of such tenant, whether such incumbrancer is a party to the proceedings or not. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113. Partition 111(3)

Under this section [former Code 1962 Section 10‑2201], where, after life tenants’ death, one of the remaindermen mortgaged his undivided interest in realty, and thereafter, with two other remaindermen, purchased property at partition sale paying in only sufficient funds to pay off cotenants other than purchasers, it was held that as soon as the mortgagor became seized in the one‑third undivided interest by such purchase, he became trustee for benefit of mortgagee to extent of his original undivided interest. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113.

Statutory lien for purchase money will not attach unless the provisions have been strictly complied with. Burnside v. Watkins (S.C. 1889) 30 S.C. 459, 9 S.E. 518.

11. Attorney’s fees

Award of attorney fees to sister was proper, in sibling’s action for partition and an accounting; evidence established that sibling was not ousted by sister, and sister was forced to defend against allegations that were previously raised and dismissed with prejudice in a probate court action. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Partition 114(4)

**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.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k13.

Partition 13.

C.J.S. Partition Section 33.

**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.

CROSS REFERENCES

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 288k115.1 to 288k117.

Partition 115.1 to 117.

C.J.S. Partition Sections 212 to 216.

LAW REVIEW AND JOURNAL COMMENTARIES

“Heirs’ Property” The Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

NOTES OF DECISIONS

In general 1

1. In general

Duly instituted partition action cannot be bootstrapped into adverse claims action absent compliance with all statutory provisions applicable to adverse possession. Bultman v. Barber (S.C. 1981) 277 S.C. 5, 281 S.E.2d 791. Adverse Possession 10

**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.

RESEARCH REFERENCES

Encyclopedias

130 Am. Jur. Trials 95, Partition of Property.

S.C. Jur. Cotenancies Section 47, Partition.

Notes of Decisions

Construction and application 1

1. Construction and application

Probate code provision dealing with partition of real property applied to estate representative’s action to recover farm subsidies paid by the United States Department of Agriculture (USDA) to testator’s son, rather than statutory provision that dealt with a petition for partition of real property owned by joint tenants or tenants in common, where the action originated in the probate court. Estate of Livingston v. Livingston (S.C.App. 2013) 404 S.C. 137, 744 S.E.2d 203, certiorari granted, certiorari dismissed as improvidently granted 412 S.C. 610, 773 S.E.2d 579. Executors and Administrators 86(2)

**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.

CROSS REFERENCES

Action for forfeiture of property to state, see Section 15‑77‑40.

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

State as defendant in action affecting title to real estate, see Section 15‑77‑30.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k46.1.

Partition 46.1.

C.J.S. Partition Section 72.

LAW REVIEW AND JOURNAL COMMENTARIES

“Heirs’ Property” The Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

**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.

CROSS REFERENCES

Confirmation of titles, generally, see Sections 27‑11‑10 et seq.

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k1.

Partition 1.

C.J.S. Partition Sections 1 to 2, 4, 7, 16, 20.

LAW REVIEW AND JOURNAL COMMENTARIES

“Heirs’ Property” the Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

**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.

CROSS REFERENCES

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Powers and jurisdiction of Circuit Courts and judges, generally, see Sections 14‑5‑310 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k37.

Partition 37.

C.J.S. Partition Section 64.

RESEARCH REFERENCES

ALR Library

59 ALR 6th 433 , Construction and Application of Federal Uniformed Services Former Spouse Protection Act in State Court Divorce Proceedings.

46 ALR 5th 735 , Family Court Jurisdiction to Hear Contract Claims.

Encyclopedias

130 Am. Jur. Trials 95, Partition of Property.

S.C. Jur. Cotenancies Section 47, Partition.

S.C. Jur. Lis Pendens Section 23, Partition Actions.

LAW REVIEW AND JOURNAL COMMENTARIES

“Heirs’ Property” the Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

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1. In general

As to infant parties and fee conditional, see Owings v Hunt, 53 SC 187, 31 SE 237 (1898). DuPont v DuBos, 52 SC 244, 29 SE 665 (1898).

A party seeking partition by sale has the burden of proving that partition in kind is not practicable or expedient. Brown v. Brown (S.C.App. 2013) 402 S.C. 202, 740 S.E.2d 507. Partition 77(4)

Trial court in partition action properly refused individual co‑purchaser credit for payments he made on note that financed the purchase of subject property following trial at which court determined that individual purchaser and limited liability company (LLC) purchaser each owned a 50% interest in the property, as individual co‑purchaser prevented offers to purchase the property made after the trial from being consummated, and after property was sold at judicial sale court determined that individual co‑purchaser would bear the cost of prolonging co‑purchasers’ strife over the property. Marichris, LLC v. Derrick (S.C.App. 2009) 384 S.C. 345, 682 S.E.2d 301, on remand 2009 WL 6409013. Partition 87

While equitable considerations such as the length of ownership and sentimental attachment to the property may be considered, the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or allow a partition by allotment. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

Partition by public sale, where there is disparate testimony as to the value of the property, will be required if equity necessitates such an outcome. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

Party seeking a partition by sale carries the burden of proof to show that partition by allotment is not practicable or expedient. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(4)

Partition by allotment, not judicial sale, was most equitable result in co‑tenants’ partition action against other co‑tenant, although there were conflicting appraisals as to property’s value; value of property could be obtained by taking into consideration average of all appraisals and co‑tenants’ recent purchase of one‑half interest in property for $160,000, parties’ pecuniary interests would not be damaged by averaging appraisals, and co‑tenants purchased their interest with knowledge that other co‑tenant would be unwilling to sell property and with apparent intention to seek immediate partition of property. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

A partition action is an equitable action heard by a judge alone and, as such, the Supreme Court on review may find facts in accordance with its view of the preponderance of the evidence. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897. Appeal And Error 1122(2); Partition 34

The disparate testimony of co‑owners of property as to the value of the subject property required partition by public sale, which would afford each party an opportunity to back her own judgment of value by bidding for the interest of the other. Pruitt v. Pruitt (S.C.App. 1989) 298 S.C. 411, 380 S.E.2d 862.

Partition in kind or by allotment may be resorted to only when it can be fairly and impartially made and without injury to any of the parties in interest. Few v. Few (S.C. 1963) 242 S.C. 433, 131 S.E.2d 248. Partition 77(3)

Applied in Cooley v. Cooley (S.C. 1952) 222 S.C. 513, 73 S.E.2d 712.

As to allegation of ouster, see Elmore v. Davis (S.C. 1897) 49 S.C. 1, 26 S.E. 898.

2. Circuit court

Partition and accounting was appropriate remedy for dispute regarding ownership of condominium property; tenants did not clearly establish the specific terms of their alleged contract for the purchase of co‑tenant’s interest in the condominium, tenants requested partition as an alternative remedy, and co‑tenant also requested partition as a remedy. Fesmire v. Digh (S.C.App. 2009) 385 S.C. 296, 683 S.E.2d 803. Partition 14

Circuit Court was not divested of its subject matter jurisdiction over wife’s action against husband to partition property when husband filed subsequent action in Family Court seeking equitable distribution and separate maintenance and support; Circuit Court maintained jurisdiction based on status of case at time of filing. Gilley v. Gilley (S.C. 1997) 327 S.C. 8, 488 S.E.2d 310, rehearing denied. Courts 475(15)

Actions requesting settlement of claims owed by and to an estate must be originated in the probate court. Thus, in an action by 2 brothers against a third brother for partition by sale of real property inherited by the 3 from their mother and for the settlement of various claims against their father’s estate, the parties’ claims relating to their father’s estate were matters for the probate court and, therefore, the circuit court lacked jurisdiction over the subject matter of that portion of the action. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897.

3. Court of Common Pleas

The Court of Common Pleas did not have subject matter jurisdiction over a former wife’s action, brought pursuant to Section 15‑61‑50, which sought a division of retirement benefits not previously divided, since separate actions to determine property rights would be considered “other marital litigation” within the meaning of Section 20‑7‑420(2), and thus the Family Court would have exclusive jurisdiction. Terry v. Lee (S.C. 1992) 308 S.C. 459, 419 S.E.2d 213.

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. Eichor v. Eichor (S.C.App. 1986) 290 S.C. 484, 351 S.E.2d 353. Partition 38

4. Timber

An estate in trees may exist separate from the estate in the land and is the subject of partition. It is discretionary with the court whether they be sold together or not. Rivers v. Atlantic Coast Lumber Corp. (S.C. 1908) 81 S.C. 492, 62 S.E. 855. Partition 12(1)

5. Nonparties

Special referee did not improperly attempt to assert personal jurisdiction over a nonparty in partition action concerning property on which nonparty resided, where special referee’s order granted defendants 90 days to move nonparty, who was their mother, to their portion of property before plaintiff could institute ejectment action, and special referee did not force nonparty off the homeplace. Campbell v. Jordan (S.C.App. 2009) 382 S.C. 445, 675 S.E.2d 801, rehearing denied. Partition 42

6. Jurisdiction

Probate court lacked subject matter jurisdiction over petition to physically partition farm, ownership of which passed to original owner’s heirs upon his death 89 years before the petition; probate code merely gave probate court subject matter jurisdiction over estates of decedents or partition actions prior to closing of estate, and original owner’s estate closed 64 years earlier. Byrd v. McDonald (S.C.App. 2016) 417 S.C. 474, 790 S.E.2d 200. Partition 40

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

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.

LIBRARY REFERENCES

Westlaw Key Number Searches: 288k74; 288k77.

Partition 74, 77.

C.J.S. Partition Sections 111 to 112.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

S.C. Jur. South Carolina Rules of Civil Procedure Section 71.1, Reporter’s Notes.

LAW REVIEW AND JOURNAL COMMENTARIES

“Heirs’ Property” The Problem, Pitfalls, and Possible Solutions. 25 S.C. L. Rev. 151.

NOTES OF DECISIONS

In general 1

1. In general

Evidence was insufficient to support master‑in‑equity’s partition of jointly held properties by sale based on his determination that needless expense would have been incurred by issuance of a writ of partition to allow for partition in kind or by allotment; brother’s self‑serving testimony that county would not allow landlocked property to be subdivided was not supported by evidence in the record, and even if county had such a policy in place, it would not preclude a state court from exercising its statutory authority to partition the property in kind, and the master made no findings as to the value of the properties or what it would cost for the commissioners necessary for a writ of partition. Brown v. Brown (S.C.App. 2013) 402 S.C. 202, 740 S.E.2d 507. Partition 77(4)

While equitable considerations such as the length of ownership and sentimental attachment to the property may be considered, the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or allow a partition by allotment. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

Partition by public sale, where there is disparate testimony as to the value of the property, will be required if equity necessitates such an outcome. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

Party seeking a partition by sale carries the burden of proof to show that partition by allotment is not practicable or expedient. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(4)

Partition by allotment, not judicial sale, was most equitable result in co‑tenants’ partition action against other co‑tenant, although there were conflicting appraisals as to property’s value; value of property could be obtained by taking into consideration average of all appraisals and co‑tenants’ recent purchase of one‑half interest in property for $160,000, parties’ pecuniary interests would not be damaged by averaging appraisals, and co‑tenants purchased their interest with knowledge that other co‑tenant would be unwilling to sell property and with apparent intention to seek immediate partition of property. Zimmerman v. Marsh (S.C. 2005) 365 S.C. 383, 618 S.E.2d 898. Partition 77(3)

Applied in Cooley v. Cooley (S.C. 1952) 222 S.C. 513, 73 S.E.2d 712.

Issuance of a writ in partition is not necessary to determine whether partition in kind is practicable, in view of this section [former Code 1962 Section 10‑2210] expressly giving the court the same power to decide the issue upon testimony as have the commissioners in partition. Tedder v. Tedder (S.C. 1920) 115 S.C. 91, 104 S.E. 318. Partition 65

**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.

CROSS REFERENCES

Cost of proceeding for executions and judicial sales, see Section 15‑39‑480.

Order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 288k114.

Partition 114.

C.J.S. Partition Section 197.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 62, Partition.

S.C. Jur. Attorney Fees Section 77, Trial Judge’s Discretion.

S.C. Jur. Attorney Fees Section 71.1, Common Fund.

S.C. Jur. Cotenancies Section 47, Partition.

S.C. Jur. Reference Section 13, Specific Matters.

Treatises and Practice Aids

4 Causes of Action 2d 443, Cause of Action for Partition of Jointly Owned Real Property Following Termination of Marital Relationship.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

Interest in property 2

1. In general

Trial court was not required to order that attorney fees incurred by both parties be paid out of the common fund created when subject property was sold, in partition action between co‑purchasers disputing their respective interests in the property; though both statute and rule allowed for an award of attorney fees from the common fund, trial court had authority to equitably assess attorney fees against any or both co‑purchasers, trial court found that the conduct of one of the co‑purchasers was inequitable and originally concluded that such co‑purchaser should pay the other co‑purchaser’s attorney fees, and the award of attorney fees to one co‑purchaser did mandate an award of fees to all attorneys. Marichris, LLC v. Derrick (S.C.App. 2009) 384 S.C. 345, 682 S.E.2d 301, on remand 2009 WL 6409013. Attorney And Client 155; Partition 114(4)

Award of appellate attorney fees to brother was proper, even though sister argued that brother was no longer a party to the partition action; sister appealed all orders, brother remained a named party whose interests could be affected by appeal, and the Court of Appeals remanded the issue of partition of a pond, which was partly owned by brother. Parker v. Shecut (S.C. 2004) 359 S.C. 143, 597 S.E.2d 793. Partition 114(4)

Record supported award of attorney fees against testatrix’s daughter in her action against testatrix’s sons to partition testatrix’s estate in accordance with her will rather than private agreement executed by siblings after her death; evidence showed that daughter abused partition process and failed to effect partition she sought, as she quarrelled with one son concerning operation of partnership they formed to manage property they received under agreement, she then attempted to involve other son in these disputes, and when he refused, she breached agreement and placed lis pendens on property allotted solely to sons by agreement. Parker v. Shecut (S.C.App. 2000) 340 S.C. 460, 531 S.E.2d 546, rehearing denied, certiorari granted, reversed 349 S.C. 226, 562 S.E.2d 620. Partition 114(6)

The fixing and assessing of attorney’s fees under Section 15‑61‑110 is a matter within the circuit court’s discretion, the exercise of which will not be disturbed absent a showing of abuse thereof. S & W Corp. of Inman v. Wells (S.C.App. 1984) 283 S.C. 218, 321 S.E.2d 183. Appeal And Error 984(5); Partition 114(4)

No abuse of discretion resulted from setting the fee of plaintiffs’ attorney in a partition action and directing the sale of a portion of the property in question unless the fee were paid within 60 days; the attorney had standing to petition for the allowance of attorneys’ fees since Section 15‑61‑110 makes the attorney the beneficiary and authorizes the levy of the fee against “any or all of the parties in interest” including his own client. Briggs v. Jackson (S.C. 1981) 275 S.C. 523, 273 S.E.2d 532.

Under this section [former Code 1962 Section 10‑2211], the allowance of attorneys’ fees is within the discretion of the trial judge. Smith v. Hawkins (S.C. 1970) 254 S.C. 423, 175 S.E.2d 824, certiorari denied 91 S.Ct. 478, 400 U.S. 999, 27 L.Ed.2d 449, rehearing denied 91 S.Ct. 948, 401 U.S. 950, 28 L.Ed.2d 233.

Section not applicable in suit by life tenant to sell real property and reinvest the funds. Caughman v. Caughman (S.C. 1965) 247 S.C. 104, 146 S.E.2d 93.

The allowance of fees is discretionary with the trial judge, and his decision in such matters will not be disturbed unless an abuse of discretion is shown. Watson v. Little (S.C. 1956) 229 S.C. 486, 93 S.E.2d 645. Appeal And Error 984(2); Partition 114(4)

2. Interest in property

The plaintiff in a partition action was entitled to attorney fees, even though it was determined that he had no interest in the property at issue, where plaintiff had spent much time and effort in locating the numerous and geographically scattered descendants of testator and where they then took advantage of his efforts by cross‑claiming for petition, thereby receiving the advantage of work done by plaintiff; however, it was only equitable for plaintiff to recover attorney fees to the extent that his work was helpful to the true owners. Daniel v. White (S.C. 1979) 272 S.C. 477, 252 S.E.2d 912.

ARTICLE 3

Clementa C. Pinckney Uniform Partition of Heirs’ Property Act

**SECTION 15‑61‑310.** Short title.

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.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

**SECTION 15‑61‑320.** Definitions.

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.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Service of pleading, notice by publication, see Section 15‑61‑340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

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.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Cotenant requesting partition by sale, see Section 15‑61‑370.

Report of broker appointed to offer heirs’ property for open‑market sale, see Section 15‑61‑410.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Partition in kind or by allotment, see Section 15‑61‑380.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Cotenant requesting partition by sale, see Section 15‑61‑370.

Determination of manifest prejudice or injury to cotenants as a group, see Section 15‑61‑390.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Partition in kind or by allotment, see Section 15‑61‑380.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Partition by sale defined, see Section 15‑61‑320.

Report of broker appointed to offer heirs’ property for open‑market sale, see Section 15‑61‑410.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 47, Partition.

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

(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.”

CROSS REFERENCES

Sale of heirs’ property, open‑market sale, sale by sealed bids, see Section 15‑61‑400.

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

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.”

Federal Aspects

Electronic Signatures in Global and National Commerce Act (E‑Sign Act); Pub.L. 106‑229, June 30, 2000, 114 Stat. 464; short title, see 15 U.S.C.A. Section 7001 note.