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AB-2245 Partition of real property. (2021-2022)

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Assembly Bill No. 2245

CHAPTER 82

An act to amend Sections 872.020, 874.311, 874.312, 874.313, 874.314, 874.316, 874.319, 874.320, 874.321, and 874.321.5 of, to amend the heading of Chapter 10 (commencing with Section 874.311) of Title 10.5 of Part 2 of, and to repeal Section 874.322 of, the Code of Civil Procedure, relating to property.

[Approved by Governor July 01, 2022. Filed with Secretary of State July 01, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2245, Ramos. Partition of real property.

Existing law authorizes an owner of an estate in real property to commence and maintain an action for partition of the property against all persons having or claiming interests in the estate as to which partition is sought. If the court finds that the plaintiff is entitled to partition, it is required to make an interlocutory judgment that determines the interests of all owners of the property and orders that the property be divided among those parties in accordance with their interests or sold with the proceeds divided among them, as specified.

Under the Uniform Partition of Heirs Property Act, specified procedures apply in an action to partition real property that is heirs property, defined as property for which there is no agreement regarding partition in a record that binds the cotenants of the property, one or more of the cotenants acquired title from a relative, and meets one of specified thresholds regarding cotenants who are relatives or who acquired title from a relative.

This bill would enact the Partition of Real Property Act, which would expand the scope of the Uniform Partition of Heirs Property Act to apply to any real property held in tenancy in common where there is no agreement in a record binding all the cotenants which governs the partition of the property. The bill would make other conforming changes.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 872.020 of the Code of Civil Procedure is amended to read:

872.020. This title governs actions for partition of real property and, except to the extent not applicable, actions for partition of personal property.

SEC. 2. The heading of Chapter 10 (commencing with Section 874.311) of Title 10.5 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 10. Partition of Real Property Act

SEC. 3. Section 874.311 of the Code of Civil Procedure is amended to read:

874.311. (a) This act shall be known, and may be cited, as the Partition of Real Property Act.

(b) This act applies to real property held in tenancy in common where there is no agreement in a record binding all the cotenants which governs the partition of the property.

(c) This act applies to actions for partition of real property filed on or after January 1, 2023.

SEC. 4. Section 874.312 of the Code of Civil Procedure is amended to read:

874.312. For purposes of this chapter, the following definitions apply:

(a) "Determination of value" means a court order determining the fair market value of the property under Section 874.316 or 874.320 or adopting the valuation of the property agreed to by all cotenants.

(b) "Partition by sale" means a court-ordered sale of the entire property, whether by auction, sealed bids, or open-market sale conducted under Section 874.320.

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

(d) "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.

SEC. 5. Section 874.313 of the Code of Civil Procedure is amended to read:

874.313. (a) In an action to partition real property, the property shall be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

(b) This chapter supplements the other provisions of this title and, if an action is governed by this chapter, this chapter shall control over any provisions of this title that are inconsistent with this chapter.

SEC. 6. Section 874.314 of the Code of Civil Procedure is amended to read:

874.314. (a) This act does not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall 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 the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

SEC. 7. Section 874.316 of the Code of Civil Procedure is amended to read:

874.316. (a) Except as otherwise provided in subdivisions (b) and (c), the court shall determine the fair market value of the property by ordering an appraisal pursuant to subdivision (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 determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in the State of California to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subdivision (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating all of the following:

(1) The appraised fair market value of the property.

(2) That the appraisal is available at the court clerk's office.

(3) That a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subdivision (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subdivision (e), whether or not an objection to the appraisal is filed under paragraph (3) of subdivision (e). 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 subdivision (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

SEC. 8. Section 874.319 of the Code of Civil Procedure is amended to read:

874.319. (a) In determining whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the property practicably can be divided among the cotenants.

(2) Whether partition in kind 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.

(7) Any other relevant factor.

(b) The court shall not consider any one factor in subdivision (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

SEC. 9. Section 874.320 of the Code of Civil Procedure is amended to read:

874.320. (a) If the court orders a sale of property, the sale shall 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 10 days after the entry of the order, agree on a real estate broker licensed in the State of California to offer the property for sale, the court 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 the State of California 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 the broker appointed under subdivision (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value, the following requirements apply:

(1) The broker shall comply with the reporting requirements in Section 874.321.

(2) The sale shall be completed in accordance with state law.

(d) If the broker appointed under subdivision (b) does not obtain an offer to purchase the property for at least the determination of value within a reasonable time, the court, after a hearing, may do any of the following:

(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.

(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 shall be conducted under Chapter 6 (commencing with Section 873.510).

(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.

SEC. 10. Section 874.321 of the Code of Civil Procedure is amended to read:

874.321. (a) A broker appointed to offer property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 874.316 or 874.320.

(b) The report required by subdivision (a) shall 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.

(7) Other material facts relevant to the sale.

SEC. 11. Section 874.321.5 of the Code of Civil Procedure is amended to read:

874.321.5. In an action for partition of property, the court may apportion the costs of partition, including an appraisal fee, pursuant to Section 874.040, except that the court shall not apportion the costs of partition to any party that opposes the partition unless doing so is equitable and consistent with the purposes of this chapter.

SEC. 12. Section 874.322 of the Code of Civil Procedure is repealed.