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BILL ANALYSIS



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House Bill 4924 (as passed by the House)
Sponsor: Representative Emily Dievendorf
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 5-22-24

INTRODUCTION

The bill would enact processes to partition heirs property, which often refers to real property that is owned by multiple relatives (co-tenants) who have inherited the property's title and that does not have a written agreement on how to divide the property. Under the bill, if a co-tenant sought to partition the property, the court would have to notify all other co-tenants and allow them to buy out the interest of the co-tenant wishing to sell. The bill would require the court to determine the fair market value of the property and specify how to do so. Also, under certain conditions, such as if a buyout did not occur, the court could require co-tenants to divide the property into physically distinct and separately titled parcels. If the court ordered a sale of the property and the co-tenants agreed, the court would have to hire a real estate broker for the sale of a property and require that broker to file a report containing information on offers for the property.

FISCAL IMPACT

The bill would likely create administrative costs for local courts related to additional hearing requests and notice requirements that courts must send out. Alternatively, the bill also could reduce costs for courts because it would provide a procedure to partition real property held by two or more tenants in common. In some cases, a statutory procedure could be more cost-effective than the existing language in Chapter 33 (Partition).

MCL 600.3304 et al.

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CONTENT

The bill would add Chapter 34 (Partition of Heirs Property) to the Revised Judicature Act to do the following:

- Specify that Chapter 34 would govern actions to partition heirs property and specify how the property would have to be partitioned.
- Require a court to determine the fair-market value of a property subject to partition through an appraisal unless the value was agreed on by all cotenants or the court found an evidentiary value.
- Require the court to order an appraisal from a disinterested real estate appraiser to determine the fair market value of the property and require the appraiser to have a file verifying the appraisal with the court.
- Require the court to send notice of the appraisal to each party within 10 days of the appraisal.
- Prescribe the process to partition heirs property by sale and specify the provisions of the sale based on the number of cotenants electing to buy all the interests.
- Specify notification requirements to cotenants for a partition by sale.
- Prescribe the process to partition heirs property in kind if all the interests of the cotenants that requested a partition by sale were not purchased by other cotenants following a buyout.
- Prohibit a court from allowing a partition in kind that resulted in great prejudice to the cotenants as a group and specify the factors a court would have to consider to make that determination.
- Prescribe the process for a court to order an open market sale of heirs property.
- Prescribe the requirements of a real estate broker for the open market sale and specify that the broker would have to file a report with the court within seven days of receiving an offer to purchase the property.

Action to Partition Property

The bill would specify that Chapter 34 would apply to an action to partition real property filed after the bill's effective date. In an action to partition real property under Chapter 33, the court would have to determine whether the property was heirs property. If the court determined that the property was heirs property, the property would have to be partitioned under the bill's provisions unless all the cotenants otherwise agreed in a record. Chapter 34 would supplement Chapter 33; however, if an action were governed by Chapter 34, it would supersede the provisions of Chapter 33 that were inconsistent with Chapter 34.

"Record" would mean information that is inscribed on a tangible medium that is stored in an electronic or other medium and is retrievable in perceivable form.

The bill would not limit or affect the method by which service of a complaint could be made in an action to partition real property.

If the plaintiff in an action to partition real property sought notice by publication, and the court determined that the property could be heirs property, the plaintiff would have to post and maintain a conspicuous sign on the property, while the action was pending within 10 days of the court's determination. The sign would have to state that the action had commenced and identify the name and address of the court and the common designation by which the property was known. The court could require the plaintiff to publish the name of the plaintiff and the known defendants on the sign.

"Heirs property" would mean real property held in tenancy in common that satisfies all the following requirements at the filing of an action to partition real property:

- There is no agreement in a record binding all the cotenants that governs the partition of the property.
- One or more of the cotenants acquired title from a relative, whether living or deceased.
- At least 20% of the interests are held by cotenants who are relatives, at least 20% of the interests are held by an individual who acquired title from a relative, whether living or deceased, or at least 20% or more of the cotenants are relatives.

"Relative" would mean an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of the State other than Chapter 34. "Ascendant" would mean an individual who precedes another individual in lineage, in the direct line of ascent from the other individual. "Descendant" would mean an individual who follows another individual in lineage, in the direct line of descent from the other individual. "Collateral" would mean an individual who is related to another individual under the law of intestate succession of the State but who is not the other individual's ascendant or descendant.

If the court appointed guardians or guardians ad litem under Chapter 33, each guardian or guardian ad litem would have to be disinterested and impartial and could not be a party to or a participant in the action to partition real property.

Determination of Property Value

Except as agreed upon by all cotenants or if the court determined an evidentiary value described below, if the court determined that the property that was the subject of an action to partition real property was heirs property, the court would have to determine the fair market value of the property by ordering an appraisal.

"Determination of value" would mean a court order determining the fair market value under Determination of Property Value or Open Market Sale of Heirs Property or adopting the valuation of the property agreed to by all cotenants.

If the court ordered an appraisal, the court would have to appoint a disinterested real estate appraiser licensed in the State to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser would have to file a sworn or verified appraisal with the court. If an appraisal were conducted, the court would have to send notice to each party with a known address within 10 days after the appraisal was filed. The notice would have to state all the following:

- The appraised fair market value of the property.
- A statement that the appraisal was available at the clerk's office.
- A statement that a party could file with the court an objection to the appraisal within 30 days after the notice was sent, stating the grounds for the objection.

If an appraisal were filed with the court, the court would have to conduct a hearing to determine the fair market value of the property after 30 days of a copy of the notice of the appraisal was sent to each party, whether or not an objection to the appraisal was filed. In addition to the court-ordered appraisal, the court could consider any other evidence of value offered by a party. Following a hearing, but before considering the merits of the action to partition real property, the court would have to determine the fair market value of the property and send notice to the parties of the value.

The bill would specify that if all cotenants agreed to the value of the property or to another method of valuation, the court would have to adopt that value, or the value produced by the agreed method of valuation. If the court determined that the evidentiary value of an appraisal was outweighed by the cost of the appraisal, the court, after an evidentiary hearing, would have to determine the fair market value of the property and send notice to the parties of the value.

Partition by Sale

"Partition by sale" would mean a court-ordered sale of the entire heir's property, whether by action, sealed bids, or open-market sale conducted under Open Market Sale of Heirs Property.

If a cotenant requested partition by sale, the court would have to send notice to the parties, after determining the value of the property, that any cotenant except a cotenant that requested partition by sale could buy all the interests of the cotenants that requested partition by sale.

Within 45 days after the notice was sent, a cotenant, except a cotenant that requested partition by sale, could give notice to the court that the cotenant elected to buy all the interests of the cotenants that requested partition by sale.

The purchase price for each of the interests of a cotenant that requested partition by sale would be the value of the entire parcel multiplied by the cotenant's fractional ownership of the entire parcel.

After the 45-day expiration of the notice, the following rules would apply:

- If only one cotenant elected to buy all the interests of the cotenants that requested partition by sale, the court would have to notify all the parties of that fact.
- If more than one cotenant elected to buy all the interests of the cotenants that requested partition by sale, the court would have to 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 and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.
- If no cotenant elected to buy all the interests of the cotenants that requested partition by sale, the court would have to send notice to all the parties of that fact and resolve the action to partition real property by a partition in kind, unless a court found that a partition in kind would result in prejudice.

"Partition in kind" would mean the division of heirs property into physically distinct and separately titled parcels.

If the court sent notice to a cotenant or cotenants about an election to buy all interests, the court would have to set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants would have to pay their apportioned price to the court. After that date, all the following rules would apply:

- If all electing cotenants timely paid their apportioned price to the court, the court would have to issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.
- If no electing cotenant timely paid the price apportioned to the cotenant, the court would have to resolve the action to partition real property in kind as if the interests of the cotenants that requested partition by sale were not purchased.

Additionally, if one or more but not all the electing cotenants failed to pay the apportioned price on time, the court, on motion, would have to give notice to the electing cotenants that paid the apportioned price of the interest remaining and the price for all the interest. Within 20 days after the court gave notice any cotenant that paid the price apportioned to the cotenant could elect to purchase all the remaining interest by paying the entire price for the remaining interest to the court. After the 20-day period, the following rules would apply:

- If only one cotenant paid the entire price for the remaining interest, the court would have to issue an order reallocating the remaining interest to that cotenant and the court would promptly have to issue an order reallocating the interests of all the cotenants and disburse the amounts held by the court to the persons entitled to them.
- If no cotenant paid the entire price for the remaining interest, the court would have to resolve the action to partition real property as specified under Partition in Kind as if the interests of the cotenants that requested partition by sale were not purchased.
- If more than one cotenant paid the entire price for the remaining interest, the court would have to reapportion the remaining interest among the paying cotenants, based on each paying the 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 interest and the court would promptly have to issue an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the persons entitled to them, and promptly refund any excess payment held by the court.

Within 45 days after the court sent notice to any cotenant, except the cotenant that requested the partition, a cotenant entitled to buy an interest could request that the court authorize the 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. If the court received a timely request, the court, after a hearing, could deny the request or authorize the requested additional sale on those terms as the court determined were fair and reasonable, subject to the following limitations:

- A sale authorized described above could occur only after the purchase prices for all interests subject to sale were paid to the court and those interests have been reallocated among the appropriate cotenants described above.
- The purchase price for the interest of a cotenant that did not appear was based on the court's determination of value.

Partition in Kind

If all the interests of all cotenants that requested partition by sale were not purchased by other cotenants under Partition by Sale, or, if after conclusion of the buyout described above, a cotenant remained that had requested partition in kind, the court would have to order partition in kind unless the court, after consideration of the factors listed under Determination of Prejudice, found that partition in kind would result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court would have to approve a request by at least two parties to have the requesting parties' individual interests aggregated.

If the court did not order partition in kind, the court would have to order partition by sale under Open Market Sale of Heirs Property or, if no cotenant requested partition by sale, the court would have to dismiss the action.

If the court ordered partition in kind, the court could require that at least one of the cotenants pay one or more other cotenants so that the payments, taken together with the value of the in-kind distributions to the cotenants, would make the partition in kind just and proportionate in value to the fractional interests held.

If the court ordered partition in kind, the court would have to allocate to the cotenants who were unknown, could not be located, or were the subject of a default judgment, if the cotenant's interests were not represented, a part of the property representing the combined interests of these cotenants as determined by the court, and this part of the property would have to remain undivided.

Determination of Prejudice

In determining whether partition in kind would result in great prejudice to the cotenants as a group, the court would have to consider all the following:

- Whether it was practicable to divide the heirs property among the cotenants.
- Whether partition in kind would apportion the property in 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 would likely occur.
- Evidence of the collective duration of ownership or possession of the property by a cotenant and at least one of the predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other.
- A cotenant's sentimental attachment to the property, including any attachment arising because the property had ancestral or other unique or special value to the cotenant.
- 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.
- The degree to which the cotenants had contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or had contributed to the physical improvement, maintenance, or upkeep of the property.
- Any other relevant factor.

The court could not consider any one factor described above to be dispositive without weighing the totality of all relevant factors and circumstances.

Open Market Sale of Heirs Property

If the court ordered a sale of heirs property, the sale would have to be an open-market sale unless the court found 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.

If the court ordered an open-market sale, and the parties within 10 days after the entry of the order, agreed on a real estate broker licensed in the State to offer the property for sale, the court would have to appoint the real estate broker and establish a reasonable commission. If the parties did not agree on a real estate broker, the court would appoint a disinterested real estate broker licensed in the State to offer the property for sale and would have to establish a reasonable commission. The real estate broker would have to 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.

If the appointed real estate broker obtained, within a reasonable time, an offer to purchase the property for at least the determination of value, the real estate broker would have to comply with certain reporting requirements described below and the sale could be completed in accordance with the requirements of State law other than Chapter 34.

If the appointed real estate broker did not obtain, within a reasonable time, an offer to purchase the property for not less than the determination of value, the court, after a hearing, could do any of the following:

- Approve the highest outstanding offer, if any.
- Redetermine the value of the property and order that the property continue to be offered for an additional time.
- Order that the property be sold by sealed bids or at an auction.

If the court ordered a sale by sealed bids or an auction, the court would have to set the terms and conditions of the sale. If the court ordered an auction, the auction would have to be conducted under Chapter 33.

If a purchaser were entitled to a share of the proceeds of the sale, the purchaser would be entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Unless required to do so within a shorter time under Chapter 33, a real estate broker appointed under the bill that offered heirs property for open-market sale would have to file a report with the court within seven days after receiving an offer to purchase the property for at least the determined value.

The report would have to contain all the following information:

- A description of the property to be sold to each buyer.
- The name of each buyer.
- The proposed purchase price.
- The terms and conditions of the proposed sale, including the terms of any owner financing.
- The amounts to be paid to lienholders.
- A statement of contractual or other arrangements or conditions of the broker's commission.
- Other material facts relevant to the sale.

The bill would specify that in applying and construing Chapter 34, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enacted a uniform partition of heirs property act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.