

FIRST REGULAR SESSION

# HOUSE BILL NO. 809

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DUNN.

1603H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 528, RSMo, by adding thereto thirteen new sections relating to partition of heirs property.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 528, RSMo, is amended by adding thereto thirteen new sections, to  
2 be known as sections 528.800, 528.805, 528.810, 528.815, 528.820, 528.825, 528.830, 528.835,  
3 528.840, 528.845, 528.850, 528.855, and 528.860, to read as follows:

**528.800. Sections 528.800 to 528.860 shall be known and may be cited as the**  
2 **"Uniform Partition of Heirs Property Act".**

**528.805. As used in sections 528.800 to 528.860, the following terms shall mean:**

2 (1) "Ascendant", an individual who precedes another individual in lineage, in the  
3 direct line of ascent from the other individual;

4 (2) "Collateral", an individual who is related to another individual under the law  
5 of intestate succession of this state but who is not the other individual's ascendant or  
6 descendant;

7 (3) "Descendant", an individual who follows another individual in lineage, in the  
8 direct line of descent from the other individual;

9 (4) "Determination of value", a court order determining the fair market value of  
10 heirs property under section 528.825 or 528.845 or adopting the valuation of the property  
11 agreed to by all cotenants;

12 (5) "Heirs property", real property held in tenancy in common that satisfies all of  
13 the following requirements as of the filing of a partition action:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (a) There is no agreement in a record binding all the cotenants that governs the  
15 partition of the property;

16 (b) One or more of the cotenants acquired title from a relative, whether living or  
17 deceased; and

18 (c) Any of the following applies:

19 a. Twenty percent or more of the interests are held by cotenants who are relatives;

20 b. Twenty percent or more of the interests are held by an individual who acquired  
21 title from a relative, whether living or deceased; or

22 c. Twenty percent or more of the cotenants are relatives;

23 (6) "Partition by sale", a court-ordered sale of the entire heirs property, whether  
24 by auction, sealed bids, or open-market sale conducted under section 528.845;

25 (7) "Partition in kind", the division of heirs property into physically distinct and  
26 separately titled parcels;

27 (8) "Record", information that is inscribed on a tangible medium or that is stored  
28 in an electronic or other medium and is retrievable in perceivable form;

29 (9) "Relative", an ascendant, a descendant, or a collateral or an individual  
30 otherwise related to another individual by blood, marriage, adoption, or law of this state  
31 other than sections 528.800 to 528.860.

528.810. 1. Sections 528.800 to 528.860 apply to partition actions filed on or after  
2 August 28, 2017.

3 2. In an action to partition real property under sections 528.010 to 528.640, the  
4 court shall determine whether the property is heirs property. If the court determines that  
5 the property is heirs property, the property shall be partitioned under sections 528.800 to  
6 528.860 unless all of the cotenants otherwise agree in a record.

7 3. Sections 528.800 to 528.860 supplement sections 528.010 to 528.640 and, if an  
8 action is governed by sections 528.800 to 528.860, replace provisions of sections 528.010 to  
9 528.640 that are inconsistent with sections 528.800 to 528.860.

528.815. 1. Sections 528.800 to 528.860 do not limit or affect the method by which  
2 service of a summons in a partition action may be made.

3 2. If the plaintiff in a partition action seeks notice by publication and the court  
4 determines that the property may be heirs property, the plaintiff, no later than ten days  
5 after the court's determination, shall post a conspicuous sign on the property that is the  
6 subject of the action. The sign shall state that the action has commenced and identify the  
7 name and address of the court and the common designation by which the property is  
8 known. The court may require the plaintiff to publish on the sign the name of the plaintiff  
9 and the known defendants.

2           **528.820. Any commissioners appointed under section 528.200 shall be disinterested**  
3 **and impartial and not a party to or a participant in the action.**

4           **528.825. 1. Except as otherwise provided in subsections 2 and 3 of this section, if**  
5 **the court determines that the property that is the subject of a partition action is heirs**  
6 **property, the court shall determine the fair market value of the property by ordering an**  
7 **appraisal under subsection 4 of this section.**

8           **2. If all cotenants have agreed to the value of the property or to another method of**  
9 **valuation, the court shall adopt that value or the value produced by the agreed method of**  
10 **valuation.**

11           **3. If the court determines that the evidentiary value of an appraisal is outweighed**  
12 **by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair**  
13 **market value of the property and send notice to the parties of the value.**

14           **4. If the court orders an appraisal, the court shall appoint a disinterested real estate**  
15 **appraiser licensed in this state to determine the fair market value of the property assuming**  
16 **sole ownership of the fee simple estate. Upon completion of the appraisal, the appraiser**  
17 **shall file a sworn or verified appraisal with the court.**

18           **5. If an appraisal is conducted under subsection 4 of this section, no later than ten**  
19 **days after the appraisal is filed, the court shall send notice to each party with a known**  
20 **address, stating:**

21           **(1) The appraised fair market value of the property;**

22           **(2) That the appraisal is available at the clerk's office; and**

23           **(3) That a party may file with the court an objection to the appraisal no later than**  
24 **thirty days after the notice is sent, stating the grounds for the objection.**

25           **6. If an appraisal is filed with the court under subsection 4 of this section, the court**  
26 **shall conduct a hearing to determine the fair market value of the property no sooner than**  
27 **thirty days after a copy of the notice of the appraisal is sent to each party under subsection**  
28 **5 of this section, regardless of whether an objection to the appraisal is filed under**  
29 **subdivision (3) of subsection 5 of this section. In addition to the court-ordered appraisal,**  
30 **the court may consider any other evidence of value offered by a party.**

**7. After a hearing under subsection 6 of this section, 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.**

**528.830. 1. If any cotenant requested partition by sale, after the determination of**  
2 **value under section 528.825, the court shall send notice to the parties that any cotenant,**  
3 **except a cotenant that requested partition by sale, may buy all the interests of the cotenants**  
4 **that requested partition by sale.**

5           **2. No later than forty-five days after the notice is sent under subsection 1 of this**  
6 **section, any cotenant, except a cotenant that requested partition by sale, may give notice**  
7 **to the court that it elects to buy all the interests of the cotenants that requested partition**  
8 **by sale.**

9           **3. The purchase price for each of the interests of a cotenant that requested partition**  
10 **by sale is the value of the entire parcel determined under section 528.825 multiplied by the**  
11 **cotenant's fractional ownership of the entire parcel.**

12           **4. After expiration of the period in subsection 2 of this section, the following rules**  
13 **apply:**

14           **(1) If only one cotenant elects to buy all the interests of the cotenants that requested**  
15 **partition by sale, the court shall notify all the parties of that fact;**

16           **(2) If more than one cotenant elects to buy all the interests of the cotenants that**  
17 **requested partition by sale, the court shall allocate the right to buy those interests among**  
18 **the electing cotenants based on each electing cotenant's existing fractional ownership of the**  
19 **entire parcel divided by the total existing fractional ownership of all cotenants electing to**  
20 **buy and send notice to all the parties of that fact and of the price to be paid by each**  
21 **electing cotenant;**

22           **(3) If no cotenant elects to buy all the interests of the cotenants that requested**  
23 **partition by sale, the court shall send notice to all the parties of that fact and resolve the**  
24 **partition action under subsections 1 and 2 of section 528.835.**

25           **5. If the court sends notice to the parties under subdivision (1) or (2) of subsection**  
26 **4 of this section, the court shall set a date, no sooner than sixty days after the date the**  
27 **notice was sent, by which electing cotenants shall pay their apportioned price into the**  
28 **court. After such date, the following rules apply:**

29           **(1) If all electing cotenants timely pay their apportioned price into court, the court**  
30 **shall issue an order reallocating all the interests of the cotenants and disburse the amounts**  
31 **held by the court to the persons entitled to them;**

32           **(2) If no electing cotenant timely pays its apportioned price, the court shall resolve**  
33 **the partition action under subsections 1 and 2 of section 528.835 as if the interests of the**  
34 **cotenants that requested partition by sale were not purchased;**

35           **(3) If one or more but not all of the electing cotenants fail to pay their apportioned**  
36 **price on time, the court shall give notice to the electing cotenants that paid their**  
37 **apportioned price of the interest remaining and the price for all that interest.**

38           **6. No later than twenty days after the court gives notice under subdivision (3) of**  
39 **subsection 5 of this section, any cotenant that paid may elect to purchase all of the**

40 remaining interest by paying the entire price into the court. After the twenty-day period,  
41 the following rules apply:

42 (1) If only one cotenant pays the entire price for the remaining interest, the court  
43 shall issue an order reallocating the remaining interest to that cotenant. The court shall  
44 issue promptly an order reallocating the interests of all of the cotenants and disburse the  
45 amounts held by it to the persons entitled to them;

46 (2) If no cotenant pays the entire price for the remaining interest, the court shall  
47 resolve the partition action under subsections 1 and 2 of section 528.835 as if the interests  
48 of the cotenants that requested partition by sale were not purchased;

49 (3) If more than one cotenant pays the entire price for the remaining interest, the  
50 court shall reapportion the remaining interest among those paying cotenants, based on  
51 each paying cotenant's original fractional ownership of the entire parcel divided by the  
52 total original fractional ownership of all cotenants that paid the entire price for the  
53 remaining interest. The court shall issue promptly an order reallocating all of the  
54 cotenants' interests, disburse the amounts held by it to the persons entitled to them, and  
55 promptly refund any excess payment held by the court.

56 7. No later than forty-five days after the court sends notice to the parties under  
57 subsection 1 of this section, any cotenant entitled to buy an interest under this section may  
58 request the court to authorize the sale as part of the pending action of the interests of  
59 cotenants named as defendants and served with the complaint but that did not appear in  
60 the action.

61 8. If the court receives a timely request under subsection 7 of this section, the court,  
62 after hearing, may deny the request or authorize the requested additional sale on such  
63 terms as the court determines are fair and reasonable, subject to the following limitations:

64 (1) A sale authorized under this subsection may occur only after the purchase  
65 prices for all interests subject to sale under subsections 1 to 6 of this section have been paid  
66 into court and those interests have been reallocated among the cotenants as provided in  
67 those subsections; and

68 (2) The purchase price for the interest of a nonappearing cotenant is based on the  
69 court's determination of value under section 528.825.

528.835. 1. If all the interests of all cotenants that requested partition by sale are  
2 not purchased by other cotenants under section 528.830, or if after conclusion of the  
3 buyout under section 528.830, a cotenant remains that has requested partition in kind, the  
4 court shall order partition in kind unless the court, after consideration of the factors listed  
5 in section 528.840, finds that partition in kind will result in great prejudice to the cotenants

6 as a group. In considering whether to order partition in kind, the court shall approve a  
7 request by two or more parties to have their individual interests aggregated.

8       **2. If the court does not order partition in kind under subsection 1 of this section,**  
9 **the court shall order partition by sale under section 528.845 or, if no cotenant requested**  
10 **partition by sale, the court shall dismiss the action.**

11       **3. If the court orders partition in kind under subsection 1 of this section, the court**  
12 **may require that one or more cotenants pay one or more other cotenants' amounts so that**  
13 **the payments, taken together with the value of the in-kind distributions to the cotenants,**  
14 **will make the partition in kind just and proportionate in value to the fractional interests**  
15 **held.**

16       **4. If the court orders partition in kind, the court shall allocate to the cotenants that**  
17 **are unknown, unlocatable, or the subject of a default, if their interests were not bought out**  
18 **under section 528.830, a part of the property representing the combined interests of these**  
19 **cotenants as determined by the court and this part of the property shall remain undivided.**

**528.840. 1. If determining under subsection 1 of section 528.835 whether partition**  
2 **in kind would result in great prejudice to the cotenants as a group, the court shall consider**  
3 **the following:**

4       **(1) Whether the heirs property practicably can be divided among the cotenants;**

5       **(2) Whether partition in kind would apportion the property in such a way that the**  
6 **aggregate fair market value of the parcels resulting from the division would be materially**  
7 **less than the value of the property if it were sold as a whole, taking into account the**  
8 **condition under which a court-ordered sale likely would occur;**

9       **(3) Evidence of the collective duration of ownership or possession of the property**  
10 **by a cotenant and one or more predecessors in title or predecessors in possession to the**  
11 **cotenant who are or were relatives of the cotenant or each other;**

12       **(4) A cotenant's sentimental attachment to the property, including any attachment**  
13 **arising because the property has ancestral or other unique or special value to the cotenant;**

14       **(5) The lawful use being made of the property by a cotenant and the degree to**  
15 **which the cotenant would be harmed if the cotenant could not continue the same use of the**  
16 **property;**

17       **(6) The degree to which the cotenants have contributed their pro rata share of the**  
18 **property taxes, insurance, and other expenses associated with maintaining ownership of**  
19 **the property or have contributed to the physical improvement, maintenance, or upkeep of**  
20 **the property; and**

21       **(7) Any other relevant factor.**

22           **2. The court shall not consider any one factor under subsection 1 of this section to**  
23 **be dispositive without weighing the totality of all relevant factors and circumstances.**

**528.845. 1. If the court orders a sale of heirs property, the sale shall be an**  
2 **open-market sale unless the court finds that a sale by sealed bids or an auction would be**  
3 **more economically advantageous and in the best interest of the cotenants as a group.**

4           **2. If the court orders an open-market sale and the parties, no later than ten days**  
5 **after the entry of the order, agree on a real estate broker licensed in this state to offer the**  
6 **property for sale, the court shall appoint the broker and establish a reasonable**  
7 **commission. If the parties do not agree on a broker, the court shall appoint a disinterested**  
8 **real estate broker licensed in this state to offer the property for sale and shall establish a**  
9 **reasonable commission. The broker shall offer the property for sale in a commercially**  
10 **reasonable manner at a price no lower than the determination of value and on the terms**  
11 **and conditions established by the court.**

12           **3. If the broker appointed under subsection 2 of this section obtains within a**  
13 **reasonable time an offer to purchase the property for at least the determination of value:**

14           **(1) The broker shall comply with the reporting requirements under section 528.850;**  
15 **and**

16           **(2) The sale may be completed in accordance with state law other than as provided**  
17 **in sections 528.800 to 528.860.**

18           **4. If the broker appointed under subsection 2 of this section does not obtain within**  
19 **a reasonable time an offer to purchase the property for at least the determination of value,**  
20 **the court, after hearing, may:**

21           **(1) Approve the highest outstanding offer, if any;**

22           **(2) Redetermine the value of the property and order that the property continue to**  
23 **be offered for an additional time; or**

24           **(3) Order that the property be sold by sealed bids or at an auction.**

25           **5. If the court orders a sale by sealed bids or an auction, the court shall set terms**  
26 **and conditions of the sale. If the court orders an auction, the auction shall be conducted**  
27 **in accordance with sections 528.010 to 528.640.**

28           **6. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is**  
29 **entitled to a credit against the price in an amount equal to the purchaser's share of the**  
30 **proceeds.**

**528.850. 1. Unless required to do so within a shorter time under sections 528.010**  
2 **to 528.640, a broker appointed under subsection 2 of section 528.845 to offer heirs property**  
3 **for open-market sale shall file a report with the court no later than seven days after**

4 receiving an offer to purchase the property for at least the value determined under section  
5 528.825 or 528.845.

6 2. The report required by subsection 1 of this section shall contain the following  
7 information:

8 (1) A description of the property to be sold to each buyer;

9 (2) The name of each buyer;

10 (3) The proposed purchase price;

11 (4) The terms and conditions of the proposed sale, including the terms of any owner  
12 financing;

13 (5) The amounts to be paid to lienholders;

14 (6) A statement of contractual or other arrangements or conditions of the broker's  
15 commission; and

16 (7) Other material facts relevant to the sale.

528.855. In applying and construing sections 528.800 to 528.860, consideration shall  
2 be given to the need to promote uniformity of the law with respect to its subject matter  
3 among states that enact it.

528.860. Sections 528.800 to 528.860 modify, limit, and supersede the Electronic  
2 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but shall  
3 not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
4 authorize electronic delivery of any of the notices described in Section 103(b) of that act,  
5 15 U.S.C. Section 7003(b).

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