

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 919

100TH GENERAL ASSEMBLY

1956H.02P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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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 eleven new sections, to  
2 be known as sections 528.700, 528.705, 528.710, 528.715, 528.720, 528.725, 528.730, 528.735,  
3 528.740, 528.745, and 528.750, to read as follows:

**528.700. 1. The provisions of sections 528.700 to 528.750 shall be known and may  
2 be cited as the "Save the Family Farm Act".**

**3 2. For purposes of sections 528.700 to 528.750, the following terms and phrases  
4 shall mean:**

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

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

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

**12 (4) "Determination of value", a court order determining the fair market value of  
13 heirs' property under section 528.720 or 528.740 or adopting the valuation of the property  
14 agreed to by all cotenants;**

**15 (5) "Heirs' property", real property held in tenancy in common that satisfies all of  
16 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.

- 17           (a) There is no agreement in a record binding all the cotenants that governs the  
18 partition of the property;
- 19           (b) One or more of the cotenants acquired title from a relative, whether living or  
20 deceased; and
- 21           (c) Any of the following applies:
- 22               a. Twenty percent or more of the interests are held by cotenants who are relatives;
- 23               b. Twenty percent or more of the interests are held by an individual who acquired  
24 title from a relative, whether living or deceased; or
- 25               c. Twenty percent or more of the cotenants are relatives;
- 26           (6) "Partition by sale", a court-ordered sale of the entire heirs' property, whether  
27 by auction, sealed bids, or open-market sale conducted under section 528.740;
- 28           (7) "Partition in kind", the division of heirs' property into physically distinct and  
29 separately titled parcels;
- 30           (8) "Record", information that is inscribed on a tangible medium or that is stored  
31 in an electronic or other medium and is retrievable in perceivable form;
- 32           (9) "Relative", an ascendant, descendant, or collateral or an individual otherwise  
33 related to another individual by blood, marriage, adoption, or law of this state other than  
34 the provisions of sections 528.700 to 528.750.

          528.705. 1. Sections 528.700 to 528.750 shall apply to partition actions filed on or  
2 after August 28, 2019.

3           2. In an action to partition real property under this chapter, the court shall  
4 determine whether the property is heirs' property. If the court determines that the  
5 property is heirs' property, the property shall be partitioned under sections 528.700 to  
6 528.750 unless all of the cotenants otherwise agree in a record.

7           3. Sections 528.700 to 528.750 shall supplement sections 528.010 to 528.640 and  
8 Missouri supreme court rule 96.

          528.710. 1. Sections 528.700 to 528.750 shall not limit or affect the method by  
2 which service of a complaint in a partition action may be made.

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

2       **528.715.** If the court appoints commissioners under supreme court rule 96, each  
3 commissioner, in addition to the requirements and disqualifications applicable to  
4 commissioners in supreme court rule 96, shall be disinterested and impartial and not a  
5 party to or a participant in the action.

2       **528.720. 1.** Except as otherwise provided in subsections 2 and 3 of this section, if  
3 the court determines that the property that is the subject of a partition action is heirs'  
4 property, the court shall determine the fair market value of the property by ordering a  
5 certified appraisal under subsection 4 of this section.

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

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

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

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

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

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

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

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

29       **7.** After a hearing under subsection 6 of this section but before considering the  
30 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.

2       **528.725. 1.** If any cotenant has requested partition by sale after the determination  
of value under section 528.720, 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 528.720 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 shall 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 subsection 1 or 2 of section 528.730.

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 this date, the following rules shall 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 subsection 1 or 2 of section 528.730 as if the interests of the  
34 cotenants that requested partition by sale were not purchased; or

35       (3) If one or more but not all of the electing cotenants fail to pay their apportioned  
36 price on time, the court, on motion, 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 shall 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 **promptly issue an order reallocating the interests of all of the cotenants and disburse the**  
45 **amounts held by the court to the persons entitled to such amounts;**

46           **(2) If no cotenant pays the entire price for the remaining interest, the court shall**  
47 **resolve the partition action under subsection 1 or 2 of section 528.730 as if the interests of**  
48 **the cotenants that requested partition by sale were not purchased; or**

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 each**  
51 **paying cotenant's original fractional ownership of the entire parcel divided by the total**  
52 **original fractional ownership of all cotenants that paid the entire price for the remaining**  
53 **interest. The court shall promptly issue an order reallocating all of the cotenants' interests,**  
54 **disburse the amounts held by the court to the persons entitled to such amounts, 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 **subsections 1 to 6 of this section; 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 528.720.**

**528.730. 1. If all the interests of all cotenants that requested partition by sale are**  
2 **not purchased by other cotenants under section 528.725, or, if after conclusion of the**  
3 **buyout under section 528.725, a cotenant that has requested partition in kind remains, the**  
4 **court shall order partition in kind unless the court, after consideration of the factors listed**

5 in section 528.735, 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 528.740 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 judgment, if their interests were not  
18 bought out under section 528.725, a part of the property representing the combined  
19 interests of these cotenants as determined by the court, and that part of the property shall  
20 remain undivided.

528.735. 1. In determining, under subsection 1 of section 528.730, whether  
2 partition in kind would result in great prejudice to the cotenants as a group, the court shall  
3 consider 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 in subsection 1 of this section to be  
23   dispositive without weighing the totality of all relevant factors and circumstances.

          528.740. 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. If the court finds that an auction company is more  
12   advantageous to the cotenants as a group, it has the discretion to appoint an auction  
13   company to conduct the sale required under this subsection.

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

16          (1) The broker shall comply with the reporting requirements in section 528.745;  
17   and

18          (2) The sale may be completed in accordance with state law other than sections  
19   528.700 to 528.750.

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

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

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

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

27          5. If the court orders a sale by sealed bids or an auction, the court shall set terms  
28   and conditions of the sale. If the court orders a sale, the sale shall be conducted under  
29   supreme court rule 96.

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

2       **528.745. 1. Unless required to do so within a shorter time by supreme court rule**  
3 **96, a broker appointed under subsection 2 of section 528.740 to offer heirs' property for**  
4 **open-market sale shall file a report with the court no later than seven days after receiving**  
5 **an offer to purchase the property for at least the value determined under section 528.720**  
6 **or 528.740.**

7       **2. The report required under subsection 1 of this section shall contain the following**  
8 **information:**

- 9       **(1) A description of the property to be sold to each buyer;**
- 10       **(2) The name of each buyer;**
- 11       **(3) The proposed purchase price;**
- 12       **(4) The terms and conditions of the proposed sale, including the terms of any owner**  
13 **financing;**
- 14       **(5) The amounts to be paid to lienholders;**
- 15       **(6) A statement of contractual or other arrangements or conditions of the broker's**  
16 **commission; and**
- (7) Other material facts relevant to the sale.**

**528.750. In applying and construing sections 528.700 to 528.750, 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 such substantially similar provisions.**

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