

FIRST REGULAR SESSION

# SENATE BILL NO. 286

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

Read 1st time January 23, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1248S.01I

## AN ACT

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

*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 be known as sections 528.700, 528.705, 528.710, 528.715, 528.720, 528.725, 528.730, 528.735, 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 be cited as the "Save the Family Farm Act".**

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

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

**(2) "Collateral", 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", an individual who follows another individual in lineage, in the direct line of descent from the other individual;**

**(4) "Determination of value", a court order determining the fair market value of heirs property under section 528.725 or 528.745 or adopting the valuation of the property agreed to by all cotenants;**

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

**(a) There is no agreement in a record binding all the cotenants which governs the partition of the property;**

**(b) One or more of the cotenants acquired title from a relative,**

21 whether living or deceased; and

22 (c) Any of the following applies:

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

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

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

29 (6) "Partition by sale", a court-ordered sale of the entire heirs  
30 property, whether by auction, sealed bids, or open-market sale  
31 conducted under section 528.745;

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

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

37 (9) "Relative", an ascendant, descendant, or collateral or an  
38 individual otherwise related to another individual by blood, marriage,  
39 adoption, or law of this state other than the provisions of sections  
40 528.700 to 528.750.

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

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

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

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

4 2. If the plaintiff in a partition action seeks an order of notice by  
5 publication and the court determines that the property may be heirs  
6 property, the plaintiff, not later than ten days after the court's  
7 determination, shall post and maintain while the action is pending a  
8 conspicuous sign on the property that is the subject of the action. The

9 sign shall state that the action has commenced and identify the name  
10 and address of the court and the common designation by which the  
11 property is known. The court may require the plaintiff to publish on  
12 the sign the name of the plaintiff and the known defendants.

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

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

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

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

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

18 5. If an appraisal is conducted pursuant to subsection 4 of this  
19 section, not later than 10 days after the appraisal is filed, the court  
20 shall send notice to each party with a known 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  
24 appraisal not later than thirty days after the notice is sent, stating the  
25 grounds for the objection.

26 6. If an appraisal is filed with the court pursuant to subsection  
27 4 of this section, the court shall conduct a hearing to determine the fair  
28 market value of the property not sooner than thirty days after a copy

29 of the notice of the appraisal is sent to each party under subsection 5  
30 of this section, whether or not an objection to the appraisal is filed  
31 pursuant to subdivision (3) of subsection 5 of this section. In addition  
32 to the court-ordered appraisal, the court may consider any other  
33 evidence of value offered by a party.

34 7. After a hearing under subsection 6 of this section, but before  
35 considering the merits of the partition action, the court shall determine  
36 the fair market value of the property and send notice to the parties of  
37 the value.

528.725. 1. If any cotenant has requested partition by sale, after  
2 the determination of value pursuant to section 528.720, the court shall  
3 send notice to the parties that any cotenant, except a cotenant that  
4 requested partition by sale, may buy all the interests of the cotenants  
5 that requested partition by sale.

6 2. Not later than forty-five days after the notice is sent pursuant  
7 to subsection 1 of this section, any cotenant, except a cotenant that  
8 requested partition by sale, may give notice to the court that it elects  
9 to buy all the interests of the cotenants that requested partition by  
10 sale.

11 3. The purchase price for each of the interests of a cotenant that  
12 requested partition by sale is the value of the entire parcel determined  
13 under section 528.720 multiplied by the cotenant's fractional ownership  
14 of the entire parcel.

15 4. After expiration of the period in subsection 2 of this section,  
16 the following rules shall apply:

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

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

27 (3) If no cotenant elects to buy all the interests of the cotenants  
28 that requested partition by sale, the court shall send notice to all the

29 parties of that fact and resolve the partition action pursuant to  
30 subsections 1 and 2 of section 528.730.

31 5. If the court sends notice to the parties pursuant to  
32 subdivisions (1) or (2) of subsection 4 of this section, the court shall set  
33 a date, not sooner than sixty days after the date the notice was sent, by  
34 which electing cotenants shall pay their apportioned price into the  
35 court. After this date, the following rules shall apply:

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

40 (2) If no electing cotenant timely pays its apportioned price, the  
41 court shall resolve the partition action pursuant to subsections 1 and  
42 2 of section 528.730 as if the interests of the cotenants that requested  
43 partition by sale were not purchased;

44 (3) If one or more but not all of the electing cotenants fail to pay  
45 their apportioned price on time, the court, on motion, shall give notice  
46 to the electing cotenants that paid their apportioned price of the  
47 interest remaining and the price for all that interest.

48 6. Not later than twenty days after the court gives notice  
49 pursuant to subdivision (3) of subsection 5 of this section, any cotenant  
50 that paid may elect to purchase all of the remaining interest by paying  
51 the entire price into the court. After the twenty-day period, the  
52 following rules shall apply:

53 (1) If only one cotenant pays the entire price for the remaining  
54 interest, the court shall issue an order reallocating the remaining  
55 interest to that cotenant. The court shall issue promptly an order  
56 reallocating the interests of all of the cotenants and disburse the  
57 amounts held by the court to the persons entitled to such amounts;

58 (2) If no cotenant pays the entire price for the remaining  
59 interest, the court shall resolve the partition action under subsections  
60 1 and 2 of section 528.730 as if the interests of the cotenants that  
61 requested partition by sale were not purchased;

62 (3) If more than one cotenant pays the entire price for the  
63 remaining interest, the court shall reapportion the remaining interest  
64 among those paying cotenants, based on each paying cotenant's original  
65 fractional ownership of the entire parcel divided by the total original

66 fractional ownership of all cotenants that paid the entire price for the  
67 remaining interest. The court shall issue promptly an order  
68 reallocating all of the cotenants' interests, disburse the amounts held  
69 by the court to the persons entitled to such amounts, and promptly  
70 refund any excess payment held by the court.

71 7. Not later than forty-five days after the court sends notice to  
72 the parties pursuant to subsection 1 of this section, any cotenant  
73 entitled to buy an interest under this section may request the court to  
74 authorize the sale as part of the pending action of the interests of  
75 cotenants named as defendants and served with the complaint but that  
76 did not appear in the action.

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

81 (1) A sale authorized under this subsection may occur only after  
82 the purchase prices for all interests subject to sale under subsections  
83 1 to 6 of this section have been paid into court and those interests have  
84 been reallocated among the cotenants as provided in those subsections;  
85 and

86 (2) The purchase price for the interest of a nonappearing  
87 cotenant is based on the court's determination of value under section  
88 528.720.

528.730. 1. If all the interests of all cotenants that requested  
2 partition by sale are not purchased by other cotenants pursuant to  
3 section 528.725, or if after conclusion of the buyout pursuant to section  
4 528.725, a cotenant remains that has requested partition in kind, the  
5 court shall order partition in kind unless the court, after consideration  
6 of the factors listed in section 528.735, finds that partition in kind will  
7 result in great prejudice to the cotenants as a group. In considering  
8 whether to order partition in kind, the court shall approve a request by  
9 two or more parties to have their individual interests aggregated.

10 2. If the court does not order partition in kind pursuant to  
11 subsection 1 of this section, the court shall order partition by sale  
12 pursuant to section 528.740 or, if no cotenant requested partition by  
13 sale, the court shall dismiss the action.

14 3. If the court orders partition in kind pursuant to subsection 1

15 of this section, the court may require that one or more cotenants pay  
16 one or more other cotenants amounts so that the payments, taken  
17 together with the value of the in-kind distributions to the cotenants,  
18 will make the partition in kind just and proportionate in value to the  
19 fractional interests held.

20 4. If the court orders partition in kind, the court shall allocate  
21 to the cotenants that are unknown, unlocatable, or the subject of a  
22 default judgment, if their interests were not bought out pursuant to  
23 section 528.725, a part of the property representing the combined  
24 interests of these cotenants as determined by the court and this part of  
25 the property shall remain undivided.

528.735. 1. In determining, pursuant to subsection 1 of section  
2 528.730, whether partition in kind would result in great prejudice to  
3 the cotenants as a group, the court shall consider the following:

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

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

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

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

18 (5) The lawful use being made of the property by a cotenant and  
19 the degree to which the cotenant would be harmed if the cotenant  
20 could not continue the same use of the property;

21 (6) The degree to which the cotenants have contributed their pro  
22 rata share of the property taxes, insurance, and other expenses  
23 associated with maintaining ownership of the property or have  
24 contributed to the physical improvement, maintenance, or upkeep of  
25 the property; and

26 (7) Any other relevant factor.

27           2. The court may not consider any one factor in subsection 1 of  
28 this section to be dispositive without weighing the totality of all  
29 relevant factors and circumstances.

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

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

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

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

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

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

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

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

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

31           5. If the court orders a sale by sealed bids or an auction, the  
32 court shall set terms and conditions of the sale. If the court orders a  
33 sale, the sale shall be conducted pursuant to supreme court rule 96.

34           6. If a purchaser is entitled to a share of the proceeds of the sale,

35 the purchaser is entitled to a credit against the price in an amount  
36 equal to the purchaser's share of the proceeds.

528.745. 1. Unless required to do so within a shorter time by  
2 supreme court rule 96, a broker appointed pursuant to subsection 2 of  
3 section 528.740 to offer heirs property for open-market sale shall file a  
4 report with the court not later than seven days after receiving an offer  
5 to purchase the property for at least the value determined pursuant to  
6 section 528.720 or 528.740.

7 2. The report required by subsection 1 of this section shall  
8 contain the following 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  
13 terms of any owner financing;
- 14 (5) The amounts to be paid to lienholders;
- 15 (6) A statement of contractual or other arrangements or  
16 conditions of the broker's commission; and
- 17 (7) Other material facts relevant to the sale.

528.750. In applying and construing sections 528.700 to 528.750,  
2 consideration shall be given to the need to promote uniformity of the  
3 law with respect to its subject matter among states that enact such  
4 substantially similar provisions.

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