

## **BILL ANALYSIS**

Senate Research Center

S.B. 499  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 499 concerns the court-ordered sale of tenancy-in-common properties. Many families own property as tenants-in-common through intestate succession. Each tenant-in-common has the right to sell or convey their interest without the consent of the other tenants-in-common. They may also ask a court to partition the property, regardless of the size of their interest, or the date upon which it was acquired. A court may order partition-in-kind, or a partition sale.

Unscrupulous land speculators may identify a far-flung relative with an interest in real property, buy their interest, and then, as a tenant-in-common, exercise their right to force a partition of the property. Despite state statutes that favor partition-in-kind, in practice, judges in many states default to partition sales based on an arguably faulty economic analysis of the relative benefits. This analysis often compares the hypothetical fair market value of the larger parcel as compared to the fair market value of the subparcels, were they to be divided, without considering ancestral or historical factors, or even more fundamental aspects such as a residence providing shelter for a family of limited means.

Moreover, partition sales are often conducted in the manner of forced sale auctions, yielding far less than the property is worth. In some instances, the winning bidder is the unscrupulous speculator who bought a small interest in the property and forced the sale in the first place.

The National Conference of Commissioners on Uniform State Laws has developed a uniform act intended to ameliorate the negative consequences of current practices on property ownership. S.B. 499 creates the Uniform Partition of Heirs' Property Act in the Texas Property Code. The bill defines "heirs' property." It also provides for independent appraisal of fair market value (or alternative means of reaching fair market value if all parties agree to that value), permits one co-tenant to buy out the others if they are not the one who requested the partition, and sets out factors to be considered by the court in determining whether to order partition-in-kind of some or all of the property. The bill also establishes procedures under which any sales of the property are to be conducted. (Original Author's / Sponsor's Statement of Intent)

S.B. 499 amends current law relating to the adoption of the Uniform Partition of Heirs' Property Act.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4, Property Code, by adding Chapter 23A, as follows:

#### CHAPTER 23A. UNIFORM PARTITION OF HEIRS' PROPERTY ACT

Sec. 23A.001. SHORT TITLE. Authorizes this chapter to be cited as the Uniform Partition of Heirs' Property Act.

Sec. 23A.002. DEFINITIONS. Defines "ascendant," "collateral," "descendant," "determination of value," "heirs' property," "partition by sale," "partition in kind," "record," and "relative."

Sec. 23A.003. APPLICABILITY; RELATION TO OTHER LAW. (a) Requires the court, in an action to partition real property under Chapter 23 (Partition), to determine whether the property is heirs' property. Requires that the property, if the court determines that the property is heirs' property, be partitioned unless all of the cotenants otherwise agree in a record.

(b) Provides that this chapter supplements Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property. Provides that if an action is governed by this chapter, this chapter supersedes inconsistent provisions in Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property.

Sec. 23A.004. SERVICE; NOTICE BY POSTING. (a) Provides that this chapter does not limit or affect the method by which service of a petition in a partition action may be made.

(b) Requires the plaintiff, if the plaintiff in a partition action seeks citation by publication and the court determines that the property may be heirs' property and not later than the 10th day after the determination is made, to post, and maintain while the action is pending, a conspicuous sign on the property that is the subject of the action. Requires that the sign 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. Authorizes the court to require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Sec. 23A.005. COMMISSIONERS. Requires each commissioner, if the court appoints commissioners under Rule 761 (Appointment of Commissioners), Texas Rules of Civil Procedure, in addition to the requirements and disqualifications applicable to commissioners under that rule, to be impartial and prohibits the commissioner from being a party to or a participant in the action.

Sec. 23A.006. DETERMINATION OF VALUE. (a) Requires the court, if the court determines that the property that is the subject of a partition action is heirs' property and except as provided by Subsection (b) or (c), to determine the fair market value of the property by ordering an appraisal under Subsection (d).

(b) Requires the court, if all cotenants have agreed to the value of the property or to another method of valuation, to adopt that value or the value produced by the agreed method of valuation.

(c) Requires the court, if after an evidentiary hearing the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, to determine the fair market value of the property and send notice to the parties of the value.

(d) Requires the court, if the court orders an appraisal, to appoint a disinterested real estate appraiser to determine the fair market value of the property assuming sole ownership of the fee simple estate. Requires the appraiser, on completion of the appraisal, to file a sworn or verified appraisal with the court.

(e) Requires the court, if an appraisal is conducted under Subsection (d) and not later than the 10th day after the date the appraisal is filed, to send notice to each party with a known address, stating the appraised fair market value of the property, that the appraisal is available at the clerk's office, and that a party may file with the court an objection to the appraisal stating the grounds for the objection not later than the 30th day after the date notice is sent.

(f) Requires the court, if an appraisal is filed with the court under Subsection (d), to conduct a hearing to determine the fair market value of the property not earlier than the 30th day after the date a copy of the notice of the appraisal is sent to each party, whether or not an objection to the appraisal is filed. Authorizes the court, in addition to the court-ordered appraisal, to consider any other evidence of value offered by a party.

(g) Requires the court, after a hearing but before considering the merits of the partition action, to determine the fair market value of the property and send notice to the parties of the value.

Sec. 23A.007. COTENANT BUYOUT. (a) Requires the court, after the determination of value, if any cotenant requested partition by sale, to send notice to the parties that authorizes any cotenant, except a cotenant that requested partition by sale, to buy all the interests of the cotenants that requested partition by sale.

(b) Authorizes any cotenant, except a cotenant that requested partition by sale and not later than the 45th day after the date notice is sent, to give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) Provides that the purchase price for each of the interests of a cotenant that requested partition by sale is the determined value of the entire parcel multiplied by the cotenant's fractional ownership of the entire parcel.

(d) Requires the court, after the period provided by Subsection (b) expires, if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, to notify all the parties of that fact; if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, to allocate the right to buy those interests among the electing cotenants based on certain criteria, and to send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or, if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, to send notice to all the parties of that fact and resolve the partition action under Section 23A.008(a) or (b).

(e) Requires the court, if the court sends notice to the parties, to set a date, not earlier than the 60th day after the date notice was sent, which requires an electing cotenant to pay the cotenant's apportioned price into the court. Requires the court after that date, if all electing cotenants timely pay their apportioned price into court, 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 pays its apportioned price, to resolve the partition action as if the interests of the cotenants that requested partition by sale were not purchased; or, if one or more but not all of the electing cotenants fail to pay their apportioned price on time, to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Authorizes any cotenant that paid, not later than the 20th day after the date the court gives notice, to elect to purchase all of the remaining interest by paying the entire price into the court. Requires the court, after that period expires, if only one cotenant pays the entire price for the remaining interest, to issue an order reallocating the remaining interest to that cotenant, to promptly issue an order reallocating the interests of all of the cotenants, and to disburse the amounts held by the court to the persons entitled to the amounts; if no cotenant pays the entire price for the remaining interest, to resolve the partition action as if the interests of the cotenants that requested partition by sale were not purchased; or, if more than one cotenant pays the entire price for the remaining interest, to reapportion the remaining interest among those paying cotenants based on certain criteria, to promptly issue an order reallocating all of the cotenants' interests, to disburse the

amounts held by the court to the persons entitled to the amounts, and to promptly refund any excess payment held by the court.

(g) Authorizes any cotenant entitled to buy an interest, not later than the 45th day after the date the court sends notice to the parties, to request the court to 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.

(h) Authorizes the court after hearing, if the court receives a timely request, to deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to certain limitations.

Sec. 23A.008. PARTITION ALTERNATIVES. (a) Requires the court, if all the interests of all cotenants that requested partition by sale are not purchased by other cotenants or if after conclusion of the buyout a cotenant remains that has requested partition in kind, to order partition in kind unless the court, after consideration of the factors listed in Section 23A.009, finds that partition in kind will result in substantial prejudice to the cotenants as a group. Requires the court, in considering whether to order partition in kind, to approve a request by two or more parties to have the requesting parties' individual interests aggregated.

(b) Requires the court, if the court does not order partition in kind, to order partition by sale under Section 23A.010 or, if no cotenant requested partition by sale, to dismiss the action.

(c) Authorizes the court, if the court orders partition in kind, to require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) Requires the court, if the court orders partition in kind, to allocate to the cotenants that are unknown, unlocatable, or are the subject of a default judgment, if those cotenants' interests were not bought out under Section 23A.007, a part of the property representing the combined interests of those cotenants as determined by the court, and requires that part of the property to remain undivided.

Sec. 23A.009. CONSIDERATIONS FOR PARTITION IN KIND. (a) Requires the court, in determining whether partition in kind would result in substantial prejudice to the cotenants as a group, to consider certain relevant factors.

(b) Prohibits the court from considering any one factor under Subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

Sec. 23A.010. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION. (a) Requires that the sale, if the court orders a sale of heirs' property, be an open-market sale unless the court finds that a sale by sealed bids or at an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) Requires the court, if the court orders an open-market sale and the parties, not later than the 10th day after the date the order is entered, agree on a real estate broker to offer the property for sale, to appoint the broker and to establish a reasonable commission. Requires the court, if the parties do not agree on a broker, to appoint a disinterested real estate broker to offer the property for sale and requires the court to establish a reasonable commission. Requires the broker to offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on terms and conditions established by the court.

(c) Requires the broker, if the appointed broker obtains within a reasonable time an offer to purchase the property for at least the determination of value, to comply with the reporting requirements of Section 23A.011 and authorizes the sale to be completed in accordance with state law other than this chapter.

(d) Authorizes the court after hearing, if the appointed broker does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, to approve the highest outstanding offer, if any, to re-determine the value of the property and order that the property continue to be offered for an additional time, or to order that the property be sold by sealed bids or at an auction.

(e) Requires the court, if the court orders a sale by sealed bids or at an auction, to set terms and conditions of the sale. Requires that the auction, if the court orders an auction, be conducted in the manner provided by law for a sale made under execution.

(f) Entitles the purchaser, if a purchaser is entitled to a share of the proceeds of the sale, to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Sec. 23A.011. REPORT OF OPEN-MARKET SALE. (a) Requires an appointed broker, unless required to do so earlier by other law governing the partition of real property, to offer heirs' property for open-market sale, and to file a report with the court not later than the seventh day after the date an offer is received to purchase the property for at least a certain value.

(b) Requires that the report contain certain relevant information.

Sec. 23A.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires that in applying and construing this chapter, consideration be given to the need to promote uniformity of the law with respect to the chapter's subject matter among states that enact a law based on the uniform act on which this chapter is based.

Sec. 23A.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 2. Makes application of Chapter 23A, Property Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2017.