

By: Darby

H.B. No. 4011

A BILL TO BE ENTITLED

AN ACT

relating to the partition or voluntary sale of real property owned by certain cotenants; amending the Uniform Partition of Heirs' Property Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. relating to the partition or voluntary sale of real property owned by certain cotenants; amending the Uniform Partition of Heirs' Property Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 23, Property Code, is amended by adding Sections 23.0014, 23.0015, 23.0016, 23.0017, 23.0018, 23.0019 and 23.0025 to read as follows:

Sec. 23.0014. DEFINITIONS. In this chapter, "heir cotenant," "heirs' property," "non-heir cotenant" and "relative" have the meanings assigned by Section 23A.002.

Sec. 23.0015. REQUIREMENTS OF PETITION. (a) A petition to partition property must:

(1) meet the requirements in the Texas Rules of Civil Procedure;

(2) include a statement certifying whether the property is heirs' property;

(3) include the date that the plaintiff acquired their interest in the property; and

(4) include the plaintiff's percentage interest in the

1 property.

2 (b) If a non-heir cotenant brings a partition action for  
3 heirs' property after December 31, 2025, and the non-heir cotenant  
4 acquired their interest in said property after December 31, 2025,  
5 the petition must also include:

6 (1) a statement certifying whether the right of first  
7 refusal and notice of sale requirements in Section 5.254 have been  
8 met;

9 (2) the steps taken to exercise the due diligence  
10 required under Section 5.254; and

11 (3) the full name of the persons who received the  
12 notice required under Section 5.254.

13 Sec. 23.0016. CITATION; NOTICE OF HEIR'S BILL OF RIGHTS;  
14 FORM. (a) Citation of an action to partition real property must be  
15 served by personal service or certified mail with return receipt  
16 requested on each of the following persons:

17 (1) each joint owner of the property who is 16 years of  
18 age or older;

19 (2) the parent, managing conservator, or guardian of  
20 each joint owner who is younger than 16 years of age;

21 (3) each person who has paid any part of the property  
22 taxes on the property in any of the five years prior to the filing of  
23 the suit; and

24 (4) each person residing on the property.

25 (b) The plaintiff or plaintiff's attorney or agent must  
26 exercise due diligence to identify the name and residence of each  
27 person listed in Subsection (a) and notify the clerk of the court of

1 the identified names and residences;

2 (c) The citation is not required to be served on a person  
3 listed in Subsection (a) if:

4 (1) the person entered a court appearance in the  
5 action;

6 (2) the person is 16 years of age or older and waived  
7 citation; or

8 (3) the person is younger than 16 years of age and the  
9 party's parent, managing conservator, guardian, attorney ad litem,  
10 or guardian ad litem waived citation.

11 (d) If the name or residence of a person listed in  
12 Subsection (a) cannot be ascertained through the exercise of due  
13 diligence, the service of the citation shall be made by publication  
14 in accordance with the Texas Rules of Civil Procedures.

15 (e) The citation must include a notice of heir's property  
16 rights utilizing the standardized form created by the Office of  
17 Court Administration under Section 72.040, Government Code.

18 Sec. 23.0017. AFFIDAVIT. (a) A plaintiff who files an  
19 action to partition real property shall file with the court, no  
20 later than 20 days after the service of citation in the action is  
21 completed:

22 (1) a copy of any citation required by this chapter and  
23 the proof of delivery of service of the citation; and

24 (2) an affidavit sworn to by the plaintiff or a  
25 certificate signed by the plaintiff's attorney stating:

26 (A) that the citation was served as required by  
27 this chapter;

1                   (B) the name and address of each person to whom  
2 the citation was served, if the person's name and address are not  
3 shown on the proof of delivery; and

4                   (C) if service of citation is waived.

5           (b) If the name or location of a person required to be served  
6 the citation under Section 23.0016 has not been ascertained:

7                   (1) the affidavit must confirm that due diligence was  
8 taken to ascertain the person's name and residence and contain a  
9 statement of the actions taken to identify the name and residence of  
10 the person; and

11                   (2) the court shall inquire into the sufficiency of  
12 the diligence taken to identify the person's name and residence and  
13 require any corrective actions needed to comply with this section.

14           Sec. 23.0018. ATTORNEY AD LITEM. (a) The court shall  
15 appoint an attorney ad litem in a partition action to represent the  
16 interests of any joint owners whose name or location is unknown;

17                   (b) The court shall appoint an attorney ad litem in a  
18 partition action brought by a non-heir cotenant involving heirs'  
19 property to determine if there are any heir cotenants of the  
20 property who have not been identified and to locate any known heir  
21 cotenants who have not been served with the citation. Pursuant to  
22 this subsection:

23                   (1) the attorney ad litem shall conduct a due  
24 diligence investigation to locate known heir cotenants and identify  
25 and locate potential unknown heir cotenants, including, but not  
26 limited to, reviewing deed records, contacting known family  
27 members, and utilizing other reasonable means;

1           (2) the court shall dismiss the attorney ad litem upon  
2 a finding that the attorney ad litem completed a due diligence  
3 search for the name and location of all heir cotenants; and

4           (3) The fees for the attorney ad litem appointed under  
5 this subsection shall be paid for by the non-heir cotenant.

6           Sec. 23.0019. NOTICE OF ACTION BY POSTING; TIME FOR FIRST  
7 HEARING. (a) Not later than 10 days after bringing an action to  
8 partition property, the plaintiff shall post, and maintain while  
9 the action is pending, a conspicuous sign on the property that is  
10 the subject of the action.

11           (b) The sign must:

12           (1) be posted in a conspicuous place on the property  
13 that is reasonably accessible and that the public is most likely to  
14 observe and, if the property abuts a public thoroughfare, in a  
15 location that is easily visible from the thoroughfare;

16           (2) be made of a weatherproof material that is not  
17 likely to disintegrate or decompose;

18           (3) have dimensions of at least four feet by four feet;

19           (4) state in conspicuous language that the partition  
20 action has commenced and identify the name and address of the court  
21 and the common designation by which the property is known.

22           (b) The court may require the plaintiff to publish on the  
23 sign the name of the plaintiff and the known defendants.

24           (c) The plaintiff must file with the court proof of posting  
25 the sign in compliance with this section not later than the 10th day  
26 after the date of posting.

27           (d) The court may not hold the first hearing in the action

earlier than the 60th day after the date on which the plaintiff provides proof the sign is posted as required by this section.

Sec. 23.0025. DETERMINATION OF HEIRS' PROPERTY; APPLICABILITY; RELATION TO OTHER LAW. In an action to partition real property, after service of the citation is completed in compliance with this chapter, the court shall hold a preliminary hearing to determine whether the property is heirs' property under Chapter 23A. If the court determines that the property is heirs' property, the provisions of Chapter 23A apply unless all the cotenants otherwise agree in a written record.

SECTION 2. Section 23A.002, Property Code, is amended by adding Subdivisions (4-a) and (5-a) and amending Subdivision (5) to read as follows:

(4-a) "Heir cotenant" means an individual who:

(A) acquired a tenancy in common interest in real property from a relative by will, intestacy, or transfer on death deed; or

(B) acquired a tenancy in common interest in real property from a relative who previously acquired the interest from a relative by will, intestacy, or transfer on death deed.

(5) "Heirs' property" means real property held in tenancy in common that 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 that governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; ~~[or]~~

(iii) 20 percent or more of the cotenants are relatives; or

(iv) any heir cotenant resides on the property.

(5-a) "Non-heir cotenant" means an owner of heirs' property who is not an heir cotenant.

SECTION 3. The heading of Section 23A.003, Property Code, is amended to read as follows:

Sec. 23A.003. ~~[APPLICABILITY,]~~ RELATION TO OTHER LAW.

SECTION 4. Section 23A.003(a), Property Code, is repealed.

SECTION 5. Section 23A.004, Property Code, is repealed.

SECTION 6. Chapter 23A, Property Code, is amended by adding Section 23A.0041 to read as follows:

Sec. 23A.0041. SETTLEMENT CONFERENCE. (a) If the court in a partition action determines that the property is heirs' property, a party may file a written request that the court hold a conference for the parties to engage in settlement discussions with respect to the parties' interests in the property.

(b) On the filing of a request for a settlement conference under this section the court shall:

(1) order the parties to participate in a settlement

1 conference under this section; and

2 (2) send notice to the parties of the time and place at  
3 which the settlement conference will be held, the purpose of the  
4 settlement conference, and the requirements of this section.

5 (c) The Office of Court Administration of the Texas Judicial  
6 System shall prescribe a form to be used to provide the notice  
7 required by Subsection (b). Notice provided under Subsection (b)  
8 must be in the form prescribed.

9 (d) The plaintiff, not later than the 20th day after the  
10 date the court sends notice under Subsection (b)(2), shall post a  
11 copy of that notice on the sign required under Section 23A.0041.

12 (e) The court:

13 (1) shall hold a settlement conference under this  
14 section:

15 (A) not later than the 60th day after the date the  
16 request for the settlement conference is filed; or

17 (B) on a date agreed to by all parties; and

18 (2) may adjourn or reconvene the settlement conference  
19 as necessary during the pendency of the partition action.

20 (f) Each party to the action shall appear at the settlement  
21 conference in person, by videoconference if allowed by the court,  
22 or by counsel. Each party's representative at the settlement  
23 conference must be authorized to dispose of any portion of the case.  
24 If a defendant appears pro se, the court shall advise the defendant  
25 of the nature of the action and the defendant's rights and  
26 responsibilities as a defendant.

27 (g) If at the time the court first holds a settlement



conference under this section a defendant has not filed an answer to or motion to dismiss the partition action, the court shall:

(1) advise the defendant of the requirement to answer the petition and that the ability to contest the partition action and assert defenses may be lost if an answer is not filed;

(2) explain what is required to answer the petition in court;

(3) provide information about available resources for legal assistance; and

(4) set a deadline for any cotenant to request partition by sale.

(h) The court shall presume that a defendant who appears at a settlement conference but who did not timely file an answer in the partition action has a reasonable excuse for the default and shall allow the defendant to serve and file an answer not later than the 30th day after the date of the defendant's initial appearance at the settlement conference, without deeming the defendant to have waived any substantive defenses to the partition action. On service and filing of the defendant's answer in accordance with this subsection, the court shall vacate any default judgment that has issued against the defendant in the action.

(i) Each party to the action shall negotiate in good faith to reach a mutually agreeable resolution regarding the property, which may include:

(1) a tenancy in common agreement;

(2) a cotenant buyout and the allocation, mechanics, and financing for a cotenant buyout under Section [23A.007](#);

1           (3) partition in kind as provided under Sections  
2 23A.008 and 23A.009;

3           (4) an open-market sale as provided under Section  
4 23A.010; or

5           (5) any other agreement or loss mitigation that is  
6 fair and reasonable in consideration of the factors listed in  
7 Section 23A.009(a).

8           (j) If the parties do not reach a mutually agreeable  
9 resolution, the court may refer the case to an alternative dispute  
10 resolution procedure under Chapter 154, Civil Practice and Remedies  
11 Code.

12           (k) The court may hold in abeyance any motion by any party to  
13 a partition action while a settlement conference process under this  
14 section is ongoing, except for a motion concerning:

15                 (1) a determination of the percentage interest, if  
16 any, owned by an alleged cotenant, if the interest is in dispute; or

17                 (2) compliance with this section, including an  
18 application to extend any deadline under this section in the  
19 interest of justice.

20           SECTION 7. Section 23A.006, Property Code, is amended by  
21 amending Subsections (a) and (b) and adding Subsection (d-1) to  
22 read as follows:

23           (a) Except as provided by Subsection (b) [~~or (c)~~], if the  
24 court determines that the property that is the subject of a  
25 partition action is heirs' property, the court shall determine the  
26 fair market value of the property by ordering an appraisal under  
27 Subsection (d).

1 (b) If all cotenants have agreed in writing to the value of  
2 the property or to another method of valuation, the court shall  
3 adopt that value or the value produced by the agreed method of  
4 valuation.

5 (d-1) An appraiser appointed under Subsection (d) must be  
6 certified as a certified general appraiser under Chapter 1103,  
7 Occupations Code, unless the parties agree otherwise in writing or  
8 the court requires an appraiser with higher or additional  
9 certifications, licensing, or qualifications. Notwithstanding the  
10 foregoing, if the court determines that a certified general  
11 appraiser is unavailable to appraise the property within a  
12 ninety-day time period, the court may appoint an appraiser licensed  
13 as a certified residential appraiser to perform the appraisal  
14 provided that the appraiser's license is adequate for the type of  
15 property being appraised.

16 SECTION 8. Section 23A.007, Property Code, is amended by  
17 amending Subsection (e) to read as follows:

18 (e) If the court sends notice to the parties under  
19 Subsection (d)(1) or (2), the court shall set a date, not earlier  
20 than the ~~[60th]~~ 90th day after the date notice was sent, by which an  
21 electing cotenant must pay the cotenant's apportioned price into  
22 the court. After that date:

23 (1) if all electing cotenants timely pay their  
24 apportioned price into court, the court shall:

25 (A) issue an order reallocating all the interests  
26 of the cotenants; and

27 (B) disburse the amounts held by the court to the

1 persons entitled to them;

2 (2) if no electing cotenant timely pays its  
3 apportioned price, the court shall resolve the partition action  
4 under Section 23A.008(a) or (b) as if the interests of the cotenants  
5 that requested partition by sale were not purchased; or

6 (3) if one or more but not all of the electing  
7 cotenants fail to pay their apportioned price on time, the court  
8 shall give notice to the electing cotenants that paid their  
9 apportioned price of the interest remaining and the price for all  
10 that interest.

11 SECTION 9. Sections 23A.010(d) and (e), Property Code, are  
12 amended to read as follows:

13 (d) If the broker appointed under Subsection (b) does not  
14 obtain within a reasonable time an offer to purchase the property  
15 for at least the determination of value, the court, after hearing,  
16 may:

17 (1) approve the highest outstanding offer, if any;

18 (2) redetermine the value of the property and order  
19 that the property continue to be offered for an additional time; or

20 (3) appoint a substitute broker under Subsection (b)  
21 and order that the property continue to be offered for sale ~~[be sold~~  
22 ~~by sealed bids or at an auction]~~.

23 (e) If a substitute broker appointed under Subsection  
24 (d)(3) does not obtain within a reasonable time a reasonable offer  
25 to purchase the property, the court may order the ~~[orders a]~~ sale of  
26 the property by sealed bids or at an auction. The ~~[, the]~~ court  
27 shall set terms and conditions of the sale. If the court orders an

1 auction, the auction must be conducted in the manner provided by law  
2 for a sale made under execution.

3 SECTION 10. Chapter 23A, Property Code, is amended by  
4 adding Section 23A.0115 to read as follows

5 Sec. 23A.0115. PROHIBITION ON INITIATION OF PARTITION. (a)  
6 No partition action related to an heirs' property may be initiated  
7 by a non-heir cotenant holding less than 50 percent of the interest  
8 in said property for a period of ten years from the date the  
9 non-heir cotenant first acquired a co-ownership interest in said  
10 property.

11 (b) This section does not apply to an interest in heirs'  
12 property acquired by a non-heir cotenant prior to January 1, 2026.

13 SECTION 11. Chapter 5, Property Code, is amended by adding  
14 Subchapter H to read as follows:

15 SUBCHAPTER H. NON-PARTITION SALE OF HEIR COTENANT'S INTEREST IN  
16 HEIRS' PROPERTY

17 Sec. 5.251. DEFINITIONS. In this subchapter: "heir  
18 cotenant," heirs' property," "non-heir cotenant," and "relative"  
19 have the meanings assigned by Section 23A.002.

20 Sec. 5.252. APPLICABILITY OF SUBCHAPTER. This subchapter  
21 applies to the sale of an heir cotenant's interest in heirs'  
22 property if:

23 (1) an heir cotenant is in possession of the property; and  
24 (2) the sale does not result from an action to partition the  
25 property under Chapter 23 or 23A.

26 Sec. 5.253. RIGHT OF FIRST REFUSAL AND NOTICE OF SALE. (a)  
27 If a cotenant decides to sell all or part of their interest in

1 heirs' property to a non-heir cotenant who is not a relative of an  
2 heir cotenant, any heir cotenants who reside on the property have a  
3 right of first refusal to purchase the interest in accordance with  
4 this subchapter.

5 (b) Before selling an interest in heirs' property covered by  
6 this subchapter, the selling cotenant must have a contract with the  
7 third-party purchaser that sets forth the terms of the sale and is  
8 subject to the right of first refusal in this subchapter.

9 (c) Any heir cotenants who reside on the property are  
10 entitled to buy the interest for the same price in the contract for  
11 a period of 90 days from the date the notice under Section 5.254 is  
12 sent.

13 (d) If multiple heir cotenants who reside on the property  
14 offer to purchase the interest, priority is given to heir cotenants  
15 who:

16 (1) have occupied the property as their primary  
17 residence for at least the past five years; and

18 (2) paid all or part of the ad valorem taxes imposed on  
19 the property for at least three of the five most recent tax years.

20 (e) If a non-heir cotenant who acquired an interest in  
21 heirs' property after December 31, 2025, brings a partition action  
22 under Chapter 23 and the acquisition was not made in compliance with  
23 the right of first refusal requirements in this section, the heir  
24 cotenants who reside on the property have a right to buy the  
25 non-heir cotenant's interest in the property for the lesser of (1)  
26 the fair market value of the non-heir cotenant's interest in the  
27 property and (2) the price paid by the non-heir cotenant to acquire

1 the interests in the property.

2 Sec. 5.254. NOTICE TO HEIR COTENANTS. (a) Within 30 days  
3 of a cotenant entering into a contract for the sale of heirs'  
4 property to a non-heir cotenant, the selling cotenant shall give  
5 notice of the proposed sale to all persons in possession of the  
6 property and all known heir cotenants of the property. The notice  
7 shall include the identity of the proposed purchaser, the sales  
8 price of the proposed transaction, and a copy of the contract.

9 (b) Notice shall be sent to the heir cotenants' last known  
10 address by certified mail with return receipt requested.

11 (c) The selling cotenant has a duty to exercise due  
12 diligence to identify the names and locations of all the heir  
13 cotenants and provide the notice required under this subchapter.

14 SECTION 12. Subchapter C, Chapter 72, Government Code, is  
15 amended by adding Section 72.040 to read as follows:

16 Sec. 72.040 HEIR'S BILL OF RIGHTS FORM. (a) The Office of  
17 Court Administration of the Texas Judicial System shall promulgate  
18 an heir's bill of rights form required to be included in a citation  
19 for a partition action under Chapter 23, Property Code.

20 (b) The standardized form developed under Subsection (a)  
21 must:

22 (1) be written in English that can be easily  
23 understood by the general public and include a Spanish translation;

24 (2) provide information for accessing free or low-cost  
25 legal assistance;

26 (3) inform cotenant heirs of their rights and duties  
27 under Chapters 23 and 23A, Property Code, including their buyout

1 rights and right to request a settlement conference; and

2 (4) include such other information as the office  
3 determines is appropriate to adequately inform heirs of their  
4 rights and duties under Chapters 23 and 23A, Property Code.

5 SECTION 13. (a) Chapters 23 and 23A, Property Code, as  
6 amended by this Act, apply only to a partition action commenced on  
7 or after the effective date of this Act. A partition action  
8 commenced before the effective date of this Act is governed by the  
9 law as it existed immediately before the effective date of this Act,  
10 and that law is continued in effect for that purpose.

11 (b) As soon as practicable after the effective date of this  
12 Act, but not later than December 31, 2025, the Office of Court  
13 Administration of the Texas Judicial System shall create and make  
14 available on the office's Internet Website the forms required by  
15 Section 72.040, Government Code, and Section 23A.0041, Property  
16 Code, as added by this Act.

17 (c) Subchapter H, Chapter 5, Property Code, as added by this  
18 Act, applies only to the sale of an interest in heirs' property the  
19 closing date of which is on or after January 1, 2026. The sale of an  
20 interest in heirs' property the closing date of which is before  
21 January 1, 2026, is governed by the law as it existed immediately  
22 before the effective date of this Act, and that law is continued in  
23 effect for that purpose.

24 SECTION 14. This Act takes effect September 1, 2025.