SENATE BILL No. 156

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-17-11; IC 32-17-4.

Synopsis: Partition. Establishes a new procedure for partitioning real and personal property that: (1) requires a court to refer the matter to mediation; and (2) requires the court to order that the property be sold at auction if the parties are not able to reach an agreement during mediation. Repeals superseded provisions.

Effective: July 1, 2012.

Steele

January 4, 2012, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 156

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-1-17-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) When two (2) or more distributees are entitled to distribution of **an** undivided ~~interests~~ **interest** in any real or personal property of the estate, distribution shall be made of undivided interests ~~therein~~ **in the property** unless the personal representative or one (1) or more of the distributees petition the court **for partition** not later than the hearing on the petition for final distribution. ~~to make partition thereof.~~ If a petition is filed, the court, after notice is given to all interested persons as the court directs, shall proceed **in accordance with IC 32-17-4-2.5.** ~~to make partition, allot and divide the property in the same manner as provided by the statutes with respect to civil actions for partition, so that each party receives property of a value proportionate to the party's interest in the whole. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one (1) party. If partition is made in kind, the court may appoint a~~

~~commissioner to partition the property, who shall have the powers and perform the duties of a commissioner in civil actions for partition, and the court shall have the same powers with respect to the commissioner's report as in civil actions. If equal partition cannot be had between the parties without prejudice to the rights or interests of some, partition may be made in unequal shares and by awarding judgment for compensation to be paid by one (1) or more parties to one (1) or more of the others. Any two (2) or more parties may agree to accept undivided interests. Any sale under this section shall be conducted and confirmed in the same manner as other probate sales. The expenses of the partition, including reasonable compensation to the commissioner, shall be equitably apportioned by the court among the parties. Each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party.~~ **With respect to personal property, the person who files for partition shall conduct a title search with the bureau of motor vehicles (if the personal property is titled) or a search for liens under the Uniform Commercial Code (if the personal property is not titled). The person shall file a copy of the results of the search with the court.**

(b) If a distribution of particular assets of a decedent is to be made to two (2) or more distributees that are entitled to receive fractional shares in the assets, the decedent's personal representative may, under an agreement among the distributees, distribute the particular assets without distributing to each distributee a pro rata share of each asset. However, the personal representative shall:

(1) distribute to each distributee a pro rata share of the total fair market value of all the particular assets as of the date of distribution; and

(2) divide the assets in a manner that results in a fair and equitable division among the distributees of any capital gain or loss on the assets.

SECTION 2. IC 32-17-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) A person described in section 1(a) of this chapter may file a petition to compel partition in the circuit court or court having probate jurisdiction of the county in which the land or any part of the land is located.

(b) A petition filed under subsection (a) must contain the following:

(1) A description of the premises.

(2) The rights and titles in the land of the parties interested.

(c) At the time a person files a petition under subsection (a), the person shall cause a title search to be made regarding the land that is the subject of the partition. The person shall file a copy of the

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results of the title search with the court.

SECTION 3. IC 32-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) Not later than thirty (30) days after a petition to compel partition has been filed, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution. In its order referring the matter for mediation, the court shall advise the parties that the real or personal property will be sold at auction if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued.**

(b) If:

(1) less than sixty (60) days after the date the referral to mediation was issued under subsection (a), the parties report to the court that they are unable to reach an agreement concerning some or all of the property; or

(2) the parties have not reached an agreement concerning some or all of the property not later than sixty (60) days after the referral to mediation was issued under subsection (a);

the court shall, once all defenses have been pleaded and the matter placed at issue, immediately order that the property be sold at auction and that the proceeds be divided. If the parties have reached an agreement concerning part of the property, the court shall order the sale at auction of only those parcels or items of property with respect to which an agreement has not been reached.

(c) If the court orders that the property be sold at auction, the court shall grant the parties thirty (30) days after the date of the order to select an auctioneer. If the parties are unable to select an auctioneer not more than thirty (30) days after the court orders the property to be sold, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6.

(d) The court shall order that the property be sold not earlier than thirty (30) or later than sixty (60) days after the date on which:

(1) the parties select an auctioneer; or

(2) the court orders the sheriff to sell the property;

whichever is applicable.

(e) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and

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special assessments except prescriptive easements and easements of record, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(f) The person who causes a title search to be conducted under section 2 of this chapter or a lien search under IC 29-1-17-11 is entitled to indemnification from the proceeds of the sale.

(g) Any person who has paid a tax or special assessment on the property is entitled to pro rata indemnification from the proceeds of the sale.

(h) Any person may advertise a sale under this section at the person's own expense, but is not entitled to indemnification for these expenses.

(i) After deduction of the amounts described in subsections (e), (f), and (g) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

SECTION 4. IC 32-17-4-3 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 3. The proceedings, practice, and pleadings for an action under this chapter are the same as in civil suits, except as otherwise provided in this chapter.~~

SECTION 5. IC 32-17-4-4 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 4. (a) If:~~

~~(1) upon trial of any issue;~~

~~(2) upon default; or~~

~~(3) by consent of parties;~~

~~the court determines that partition should be made, the court shall award an interlocutory judgment that partition be made to parties who desire partition.~~

~~(b) In issuing a judgment under subsection (a), the court shall:~~

~~(1) specify the share assigned to each party; and~~

~~(2) take into consideration advancements to heirs of a person dying intestate.~~

~~(c) If the court issues a judgment under subsection (a), any part of the premises remaining after the partition belongs to the persons entitled to the premises, subject to a future partition.~~

~~(d) If:~~

~~(1) upon trial of any issue;~~

~~(2) upon default; or~~

~~(3) by confession or consent of parties;~~

~~the court determines that the land for which partition is demanded cannot be divided without damage to the owners, the court may order the whole or any part of the premises to be sold as provided under~~

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~~section 12 of this chapter.~~

SECTION 6. IC 32-17-4-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 5. Notwithstanding section 4 of this chapter, a court may not order or affirm partition of any real estate contrary to the intention of a testator expressed in the testator's will.~~

SECTION 7. IC 32-17-4-6 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 6. Upon judgment of partition, the court shall appoint three (3) individuals as commissioners who:~~

~~(1) are disinterested resident freeholders;~~

~~(2) reside and own land in the county in which court is held; and~~

~~(3) are not related to any of the parties;~~

~~who shall make partition of the land in accordance with the judgment of the court.~~

SECTION 8. IC 32-17-4-7 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 7. (a) Before discharging their duties, the commissioners appointed under section 6 of this chapter shall take an oath to faithfully perform the duties of their trust.~~

~~(b) The oath described in subsection (a) must:~~

~~(1) if taken in open court, be entered in the court's order book; and~~

~~(2) if not taken in open court, be endorsed on the warrant issued to the commissioners to make the partition.~~

SECTION 9. IC 32-17-4-8 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 8. Two (2) or more persons may, if they choose, have their shares set off together.~~

SECTION 10. IC 31-17-4-9 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 9. The remedies in this chapter are in addition to and do not limit other civil or criminal remedies available to the noncustodial parent.~~

SECTION 11. IC 32-17-4-10 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 10. If the court confirms a report filed under section 9 of this chapter, the court shall:~~

~~(1) spread the report on the order book;~~

~~(2) enter a judgment of partition in accordance with the report; and~~

~~(3) record the report and judgment in a separate book kept for that purpose.~~

SECTION 12. IC 32-17-4-11 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 11. (a) Before confirming a report filed under section 9 of this chapter, the court may, if the court determines that good cause exists, set aside the report.~~

~~(b) If the court sets aside a report under subsection (a):~~

~~(1) the court may:~~

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~~(A) recommit the duty of partition to the same commissioners; or~~

~~(B) appoint other commissioners in the same manner as the original commissioners; and~~

~~(2) the commissioners shall perform the duties described in this chapter.~~

SECTION 13. IC 32-17-4-12 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 12. (a) If the commissioners report to the court that the whole or part of the land of which partition is demanded can not be divided without damage to the owners, the court may order the whole or any part of the land to be sold at public or private sale on terms and conditions prescribed by the court.~~

~~(b) If the court orders a sale under this section, the order shall provide for reasonable public notice of the sale.~~

~~(c) If the court orders a sale under this section but does not order the sale to be made for cash, the court shall require that the purchaser make a cash payment of at least one-third (1/3) of the purchase price to the commissioner appointed under section 14 of this chapter at the time of the sale.~~

~~(d) Land sold under this section may not be sold for less than:~~

~~(1) if sold at public sale, two-thirds (2/3) of its appraised value; and~~

~~(2) if sold at private sale, its appraised value.~~

~~The court shall determine the appraised value of the land in the same manner as in cases of sales of land on execution.~~

~~(e) If only a part of land is sold under this section, the remainder may be partitioned as provided under this chapter.~~

~~(f) If the value of land ordered by the court to be sold at private sale does not exceed one thousand dollars ($1,000), the land may, in the discretion of the court, be sold without any notice of sale being had or given.~~

~~(g) In all cases, the purchaser of land sold under this section has rights in all crops planted on the land after the sale.~~

~~(h) The court may:~~

~~(1) approve reports of sale by commissioners in partition proceedings; and~~

~~(2) order the deed delivered to the purchaser.~~

SECTION 14. IC 32-17-4-13 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 13. If the court confirms partial partition:~~

~~(1) the shares assigned are full shares; and~~

~~(2) the residue reserved for sale is discharged from all title or claim of the parties receiving assignment of their shares under the~~

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~~partition.~~

SECTION 15. IC 32-17-4-14 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 14. (a) If the court orders a sale under section 12 of this chapter, the court shall appoint a commissioner, other than a commissioner appointed to make partition, to conduct the sale.~~

~~(b) A commissioner appointed under this section shall file a bond payable to the state of Indiana in an amount determined by the court, conditioned for the faithful discharge of the duties of the commissioner's trust.~~

SECTION 16. IC 32-17-4-15 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 15. (a) If the court determines that:~~

~~(1) land is sold under section 12 of this chapter for cash; or~~

~~(2) land is sold under section 12 of this chapter for partial credit and that the first or cash payment of the purchase price is paid;~~

~~the court shall order the commissioner appointed under section 14 of this chapter, or some other person, to execute a conveyance to the purchaser.~~

~~(b) A conveyance made under this section bars all claims of the prior owners of the land as if the prior owners had executed the conveyance.~~

~~(c) If partial credit is given for land sold under section 12 of this chapter, the court shall, at the time the court orders the conveyance to be made under this section, also order and direct that, concurrently with the execution of the conveyance, the purchaser shall execute to the commissioner a mortgage upon the land to secure the deferred payments of the purchase price of the land.~~

~~(d) The commissioner shall place a mortgage executed under this section upon record as required by law.~~

SECTION 17. IC 32-17-4-16 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 16. Commissioners appointed to make partition, or to sell, may not purchase the land partitioned or sold by the commissioners.~~

SECTION 18. IC 32-17-4-17 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 17. The commissioner shall pay the proceeds of a sale under this chapter after payment of just costs and expenses to the persons entitled to the proceeds according to their respective shares, under the direction of the court.~~

SECTION 19. IC 32-17-4-18 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 18. (a) Any two (2) of the persons named as commissioners to make partition may perform the duties required by this chapter.~~

~~(b) The court may fill a vacancy of a commissioner.~~

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SECTION 20. IC 32-17-4-19 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 19. (a) The occurrence of a vacancy does not invalidate the previous acts of the commissioners.~~

~~(b) A successor commissioner shall take up and continue the proceedings, which are as valid as if the proceedings had been done by the commissioners first appointed.~~

SECTION 21. IC 32-17-4-20 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 20. The court shall provide an allowance, in an amount that the court determines to be reasonable:~~

~~(1) to the commissioners for their services; and~~

~~(2) for surveying, marking, chaining, platting, and executing the necessary conveyances.~~

SECTION 22. IC 32-17-4-21 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 21. (a) All costs and necessary expenses, including reasonable attorney's fees for plaintiff's attorney, in an amount determined by the court, shall be awarded and enforced in favor of the parties entitled to the costs and expenses against the partitioners.~~

~~(b) The court shall assign costs and expenses awarded under subsection (a) against each partitioner as the court may determine in equity, taking into consideration each partitioner's relative interest in the land or proceeds apportioned.~~

SECTION 23. IC 32-17-4-22 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 22. Upon showing sufficient cause, a party to proceedings under this chapter who was not served with summons may, not more than one (1) year after a partition is confirmed, appear and open the proceedings, and obtain a review of the partition.~~

SECTION 24. IC 32-17-4-24 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 24. (a) In a proceeding for the partition of real estate:~~

~~(1) in a state court; and~~

~~(2) in which a person less than eighteen (18) years of age is a party in interest;~~

~~the commissioners appointed to make the partition may lay off into lots or out-lots, streets, and alleys, any land included in the partition and may make a plat of the lots or out-lots, streets, and alleys and submit the plat to the court for approval or rejection.~~

~~(b) If a plat submitted under subsection (a) is approved by the court:~~

~~(1) the commissioners appointed to make the partition shall acknowledge the plat in open court;~~

~~(2) the plat must be recorded as other similar plats of like nature are recorded; and~~

~~(3) the plat is legally valid as if the plat were made by a legal proprietor of the lands who is at least eighteen (18) years of age.~~

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~~(c) The court shall determine, upon the return by the commissioners of a plat described in subsection (b), whether it is in the interest of the parties for the land that is the subject of the partition proceeding to be laid off into lots or out-lots, streets, and alleys. If the court determines that it is in the interest of the parties, the appointed commissioners may partition the land as in other cases without detriment to the interested parties. If partition of the land is not practicable without detriment to the interested parties, the lots or out-lots may be sold by order of the court.~~

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