WEST VIRGINIA CODE CHAPTER 37 ARTICLE 4

WV Legislature

§37-4-1. Who entitled to partition; jurisdiction; state as party plaintiff.

Tenants in common, joint tenants and coparceners of real property, including minerals, lessees of mineral rights other than lessees of oil and gas minerals and stockholders of a closely held corporation when there are no more than five stockholders and the only substantial asset of the corporation is real estate, shall be compelled to make partition, and the circuit court of the county wherein the land or estate, or any part thereof, may be, has jurisdiction, in cases of partition, and in the exercise of that jurisdiction, may take cognizance of all questions of law affecting the legal title, that may arise in any proceedings.

The state hereafter shall, whenever it is an owner of an undivided interest in any land or real estate, together with other persons, become a party plaintiff in any proceedings by any person entitled to demand partition under the first sentence of this section. Before instituting suit for partition the person entitled to demand it shall notify the proper official who has supervision of the state land and thereafter they shall proceed as they determine best. In all cases resulting in partition or sale the costs of suit shall come from the proceeds of sale. No state official in charge of state lands may refuse to perform his duty in any case where any person is entitled to demand a partition, or sale under this article.

WV Legislature

§37-4-2. Allotting shares together.

Any two or more of the parties, if they so elect, may have their shares laid off together, when partition can be conveniently made in that way.

WV Legislature

§37-4-3. Allotment or sale; procedure for allotment.

When partition cannot be conveniently made, the entire subject may be allotted to any party or parties who will accept it, and pay therefor to the other party or parties such sum of money as his or their interest therein may entitle him or them to; or in any case in which partition cannot be conveniently made, if the interests of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced thereby, the court, notwithstanding the fact that any of those entitled may be an infant, insane person, or convict, may order such sale, or such sale and allotment, and make distribution of the proceeds of sale, according to the respective rights of those entitled, taking care, when there are creditors of any deceased person who was a tenant in common, joint tenant, or coparcener, to have the proceeds of such deceased person's part applied according to the rights of such creditors. Where it clearly appears to the court that partition cannot be conveniently made, the court may order sale without appointing commissioners. The court making an order for sale shall, when the dividend of a party exceeds the value of $300, if such party be an infant, insane person, or convict, require security for the faithful application of the proceeds of his interest, in like manner as if the sale were made under article one of this chapter.

In the event that allotment shall be made as aforesaid and the person or persons entitled to the proceeds, for any reason, cannot agree upon the value of the subject, the court, or the judge thereof in vacation, shall appoint three disinterested and qualified persons to fix the value of the whole subject who, after being duly sworn to make an appraisal of the fair market value of the subject, shall within thirty days from the taking of such oath, appraise the subject and make and file a written report of their findings in the office of the clerk of the court in which the suit is pending. If such appraisers report their disagreement, or fail to file such report within thirty days, other appraisers may in like manner be appointed, and so again, from time to time, as often as may be necessary. The report of the appraisers when filed, shall be conclusive and binding upon all persons having any interest in the subject, unless an objection is filed thereto in said clerk's office within thirty days after the date of such report by the appraiser. If objection is made to such report, the court, or the judge thereof in vacation, shall take evidence upon the value of the subject in the same manner as in other chancery matters, shall find the fair market value of the subject and shall decree payment therefor according to the respective rights of those entitled thereto as their interest may appear, taking care to protect the rights of creditors as aforesaid in this section.

If any party to the suit refuses or is unable because of any disability, including but not limited to infancy, insanity and conviction of crime, to make, execute and deliver a deed or other instrument transferring title to the subject to the person or persons to whom the subject has been allotted, the court, or the judge thereof in vacation, shall appoint a special commissioner for the purposes of accepting the purchase money from the person or persons to whom the subject has been allotted, making, executing and delivering thereto a deed or other instrument therefor and distributing such purchase money according to the respective rights of those persons entitled thereto. The special commissioner so appointed shall give

WV Legislature

bond and be governed in all respects as provided in section one, article twelve, chapter fifty-five of this code.

WV Legislature

§37-4-4. Determination of liens.

When there are liens by judgment or otherwise, on the interest of any party to a partition suit, the court may, on the petition of any person holding a lien, ascertain the liens and apply the dividend of such party in the proceeds of sale to the discharge of such liens so far as may be necessary for that purpose.

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§37-4-5. Sale of land free of dower.

The provisions of section five, article one, chapter forty- three of this code shall be applicable to any sale made under the provisions of this article.

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§37-4-6. Unknown owners.

If the name or share of any person interested in the subject of the partition be unknown, so much as is known in relation thereto shall be stated in the bill.

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§37-4-7. Lessees.

Any person who, before the partition or sale, was lessee of any of the lands divided or sold, shall hold the same of him to whom such land is allotted or sold, on the same terms on which, by his lease, he held it before the partition.

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§37-4-8. Record; effect.

The provisions of section seven, article four, chapter fifty-one of this code shall be applicable to any partition made under this article.

WV Legislature

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rulemaking.

Notwithstanding the requirements of §36-8-1 *et seq.* of this code, all funds and proceeds due under this article before or after the effective date of this section to owners of real property interests with their appurtenant rights, whose name or location is unknown and who does not make a claim for those funds for seven years after the date of the order of the court authorizing the distribution of the funds, shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code. The funds shall be paid by the special or general receiver or other person or entity holding the funds on or before November 1 of each year for all funds that became payable before July 1 of that year. The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section.

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