

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1957

---

**ENROLLED**

SENATE BILL NO. 97

(By Mr. Martin.....)

---

PASSED Feb 28..... 1957

In Effect 90 days from..... Passage



ENROLLED

Senate Bill No. 97

(By MR. MARTIN)

---

[Passed February 28, 1957; in effect ninety days from passage.]

---

AN ACT to amend and reenact section three, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allotment or sale of property and the procedure therefor.

*Be it enacted by the Legislature of West Virginia:*

That section three, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Allotment or Sale; Procedure For Allotment.*

2 —When partition cannot be conveniently made, the en-  
3 tire subject may be allotted to any party or parties who

4 will accept it, and pay therefor to the other party or  
5 parties such sums of money as his or their interest  
6 therein may entitle him or them to; or in any case in  
7 which partition cannot be conveniently made, if the in-  
8 terests of one or more of those who are entitled to the  
9 subject, or its proceeds, will be promoted by a sale of  
10 the entire subject, or allotment of part and sale of the  
11 residue, and the interest of the other person or persons  
12 so entitled will not be prejudiced thereby, the court, not-  
13 withstanding the fact that any of those entitled may be  
14 an infant, insane person, or convict, may order such sale,  
15 or such sale and allotment, and make distribution of the  
16 proceeds of sale, according to the respective rights of  
17 those entitled, taking care, when there are creditors of  
18 any deceased person who was a tenant in common, joint  
19 tenant, or coparcener, to have the proceeds of such de-  
20 ceased person's part applied according to the rights of  
21 such creditors. Where it clearly appears to the court that  
22 partition cannot be conveniently made the court may  
23 order sale without appointing commissioners. The court  
24 making an order for sale shall, when the dividend of a

25 party exceeds the value of three hundred dollars, if such  
26 party be an infant, insane person, or convict, require se-  
27 curity for the faithful application of the proceeds of his  
28 interest, in like manner as if the sale were made under  
29 article one of this chapter.

30 In the event that allotment shall be made as afore-  
31 said and the person or persons entitled to the proceeds,  
32 for any reason, cannot agree upon the value of the sub-  
33 ject, the court, or the judge thereof in vacation, shall ap-  
34 point three disinterested and qualified persons to fix the  
35 value of the whole subject, who, after being duly sworn to  
36 make an appraisal of the fair market value of the subject,  
37 shall within thirty days from the taking of such oath, ap-  
38 praise the subject and make and file a written report of  
39 their findings in the office of the clerk of the court in  
40 which the suit is pending. If such appraisers report their  
41 disagreement, or fail to file such report within thirty days,  
42 other appraisers may in like manner be appointed, and  
43 so again, from time to time, as often as may be neces-  
44 sary. The report of the appraisers when filed, shall be  
45 conclusive and binding upon all persons having any in-

46 terest in the subject, unless an objection is filed thereto  
47 in said clerk's office within thirty days after the date of  
48 the filing of such report by the appraisers. If objection  
49 is made to such report, the court, or the judge thereof in  
50 vacation, shall take evidence upon the value of the sub-  
51 ject in the same manner as in other chancery matters,  
52 shall find the fair market value of the subject and shall  
53 decree payment therefor according to the respective rights  
54 of those entitled thereto as their interest may appear,  
55 taking care to protect the rights of creditors as aforesaid  
56 in this section.

57 If any party to the suit refuses, or is unable because of  
58 any disability, including but not limited to infancy, in-  
59 sanity and conviction of crime, to make, execute and de-  
60 liver a deed or other instrument transferring title to the  
61 subject to the person or persons to whom the subject has  
62 been allotted, the court, or the judge thereof in vacation,  
63 shall appoint a special commissioner for the purposes of  
64 accepting the purchase money from the person or per-  
65 sons to whom the subject has been allotted, making, exe-  
66 cuting and delivering thereto a deed or other instrument

67 therefor and distributing such purchase money according  
68 to the respective rights of those persons entitled thereto.  
69 The special commissioner so appointed shall give bond  
70 and be governed in all respects as provided in section  
71 one, article twelve, chapter fifty-five of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
Chairman Senate Committee

*[Signature]*  
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

*[Signature]*  
Clerk of the Senate

*[Signature]*  
Clerk of the House of Delegates

*[Signature]*  
President of the Senate

*[Signature]*  
Speaker House of Delegates

The within approved this the 11th day of March, 1957.

*[Signature]*  
Governor



Filed In the Office of the Secretary of State  
of West Virginia. MAR 12 1957  
D. PITT OGDEN  
SECRETARY OF STATE