

House Engrossed

partition; property; inheritance

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2521

AN ACT

AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 27;
AMENDING SECTION 14-3911, ARIZONA REVISED STATUTES; RELATING TO THE
PARTITION OF PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, Arizona Revised Statutes, is amended by adding
3 chapter 27, to read:

4 CHAPTER 27

5 UNIFORM PARTITION OF HEIRS PROPERTY ACT

6 ARTICLE 1. GENERAL PROVISIONS

7 12-3401. Short title

8 THIS CHAPTER MAY BE CITED AS THE UNIFORM PARTITION OF HEIRS PROPERTY
9 ACT.

10 12-3402. Definitions

11 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

12 1. "ASCENDANT" MEANS AN INDIVIDUAL WHO PRECEDES ANOTHER INDIVIDUAL
13 IN LINEAGE, IN THE DIRECT LINE OF ASCENT FROM THE OTHER INDIVIDUAL.

14 2. "COLLATERAL" MEANS AN INDIVIDUAL WHO IS RELATED TO ANOTHER
15 INDIVIDUAL UNDER THE LAW OF INTESTATE SUCCESSION OF THIS STATE BUT WHO IS
16 NOT THE OTHER INDIVIDUAL'S ASCENDANT OR DESCENDANT.

17 3. "DESCENDANT" MEANS AN INDIVIDUAL WHO FOLLOWS ANOTHER INDIVIDUAL
18 IN LINEAGE, IN THE DIRECT LINE OF DESCENT FROM THE OTHER INDIVIDUAL.

19 4. "DETERMINATION OF VALUE" MEANS A COURT ORDER THAT DETERMINES THE
20 FAIR MARKET VALUE OF HEIRS PROPERTY OR THAT ADOPTS THE VALUATION OF THE
21 PROPERTY AGREED TO BY ALL COTENANTS.

22 5. "HEIRS PROPERTY" MEANS REAL PROPERTY THAT IS HELD IN TENANCY IN
23 COMMON AND THAT SATISFIES ALL OF THE FOLLOWING REQUIREMENTS AS OF THE
24 FILING OF A PARTITION ACTION:

25 (a) THERE IS NO AGREEMENT IN A RECORD THAT BINDS ALL THE COTENANTS
26 AND THAT GOVERNS THE PARTITION OF THE PROPERTY.

27 (b) ONE OR MORE OF THE COTENANTS ACQUIRED TITLE FROM A RELATIVE,
28 WHETHER LIVING OR DECEASED.

29 (c) ANY OF THE FOLLOWING APPLIES:

30 (i) TWENTY PERCENT OR MORE OF THE INTERESTS ARE HELD BY COTENANTS
31 WHO ARE RELATIVES.

32 (ii) TWENTY PERCENT OR MORE OF THE INTERESTS ARE HELD BY AN
33 INDIVIDUAL WHO ACQUIRED TITLE FROM A RELATIVE, WHETHER LIVING OR DECEASED.

34 (iii) TWENTY PERCENT OR MORE OF THE COTENANTS ARE RELATIVES.

35 6. "PARTITION BY SALE" MEANS A COURT-ORDERED SALE OF THE ENTIRE
36 HEIRS PROPERTY, WHETHER BY OPEN-MARKET SALE, SEALED BIDS OR AUCTION.

37 7. "PARTITION IN KIND" MEANS THE DIVISION OF HEIRS PROPERTY INTO
38 PHYSICALLY DISTINCT AND SEPARATELY TITLED PARCELS.

39 8. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE
40 MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
41 RETRIEVABLE IN PERCEIVABLE FORM.

42 9. "RELATIVE" MEANS AN ASCENDANT, DESCENDANT OR COLLATERAL OR AN
43 INDIVIDUAL WHO IS OTHERWISE RELATED TO ANOTHER INDIVIDUAL BY BLOOD,
44 MARRIAGE OR ADOPTION OR BY ANY OTHER LAW OF THIS STATE.

1 12-3403. Applicability

2 THIS CHAPTER APPLIES TO PARTITION ACTIONS FILED ON OR AFTER THE
3 EFFECTIVE DATE OF THIS CHAPTER.

4 12-3404. Relation to other law; service; notice by posting

5 A. IN AN ACTION TO PARTITION REAL PROPERTY UNDER SECTION 14-3911,
6 THE COURT SHALL DETERMINE WHETHER THE PROPERTY IS HEIRS PROPERTY. IF THE
7 COURT DETERMINES THAT THE PROPERTY IS HEIRS PROPERTY, THE HEIRS PROPERTY
8 MUST BE PARTITIONED PURSUANT TO THIS CHAPTER UNLESS ALL OF THE COTENANTS
9 OTHERWISE AGREE. THIS SECTION DOES NOT LIMIT OR AFFECT THE METHOD BY
10 WHICH SERVICE OF A PETITION IN A PARTITION ACTION MAY BE MADE.

11 B. IN A PARTITION ACTION, IF THE PLAINTIFF SEEKS TO GIVE NOTICE OF
12 THE ACTION BY PUBLICATION AND THE COURT DETERMINES THAT THE PROPERTY MAY
13 BE HEIRS PROPERTY, NOT LATER THAN TEN DAYS AFTER THE COURT'S DETERMINATION
14 THAT THE PROPERTY MAY BE HEIRS PROPERTY THE PLAINTIFF SHALL POST AND
15 MAINTAIN WHILE THE ACTION IS PENDING A CONSPICUOUS SIGN ON THE PROPERTY
16 THAT IS THE SUBJECT OF THE PARTITION ACTION. THE SIGN SHALL STATE THAT
17 THE PARTITION ACTION HAS COMMENCED AND SHALL IDENTIFY THE NAME AND ADDRESS
18 OF THE COURT AND THE LEGAL DESCRIPTION OF THE PROPERTY. THE COURT MAY
19 REQUIRE THE PETITIONER TO PUBLISH ON THE SIGN THE NAME OF THE PETITIONER
20 AND THE KNOWN RESPONDENTS.

21 12-3405. Determination of value

22 A. IF THE COURT DETERMINES THAT THE PROPERTY THAT IS THE SUBJECT OF
23 A PARTITION ACTION IS HEIRS PROPERTY, THE COURT SHALL DETERMINE THE FAIR
24 MARKET VALUE OF THE HEIRS PROPERTY BY ORDERING AN APPRAISAL PURSUANT TO
25 SUBSECTION B OF THIS SECTION, UNLESS ONE OF THE FOLLOWING APPLIES:

26 1. IF ALL COTENANTS HAVE AGREED TO THE VALUE OF THE PROPERTY OR TO
27 ANOTHER METHOD OF VALUATION, THE COURT SHALL ADOPT THAT VALUE OR THE VALUE
28 PRODUCED BY THE AGREED METHOD OF VALUATION.

29 2. IF THE COURT DETERMINES THAT THE EVIDENTIARY VALUE OF AN
30 APPRAISAL IS OUTWEIGHED BY THE COST OF THE APPRAISAL, THE COURT, AFTER AN
31 EVIDENTIARY HEARING, SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY
32 AND PROVIDE NOTICE TO THE PARTIES OF THE VALUE.

33 B. IF THE COURT ORDERS AN APPRAISAL, THE COURT SHALL APPOINT A
34 DISINTERESTED REAL ESTATE APPRAISER LICENSED IN THIS STATE TO DETERMINE
35 THE FAIR MARKET VALUE OF THE PROPERTY ASSUMING SOLE OWNERSHIP OF THE FEE
36 SIMPLE ESTATE. ON COMPLETION OF THE APPRAISAL, THE APPRAISER SHALL FILE A
37 SWORN OR VERIFIED APPRAISAL WITH THE COURT. IF AN APPRAISAL IS CONDUCTED
38 PURSUANT TO THIS SUBSECTION, THE COURT SHALL PROVIDE NOTICE OF THE
39 APPRAISAL TO EACH PARTY WITH A KNOWN ADDRESS NOT LATER THAN TEN DAYS AFTER
40 THE APPRAISAL IS FILED. THE NOTICE SHALL INCLUDE ALL OF THE FOLLOWING:

41 1. THE APPRAISED FAIR MARKET VALUE OF THE PROPERTY.

42 2. THAT THE APPRAISAL IS AVAILABLE AT THE COURT CLERK'S OFFICE.

43 3. THAT A PARTY MAY FILE WITH THE COURT AN OBJECTION TO THE
44 APPRAISAL NOT LATER THAN THIRTY DAYS AFTER THE NOTICE IS PROVIDED. THE
45 OBJECTION SHALL STATE THE GROUNDS FOR THE OBJECTION.

1 C. IF AN APPRAISAL IS FILED WITH THE COURT PURSUANT TO SUBSECTION B
2 OF THIS SECTION, THE COURT SHALL CONDUCT A HEARING TO DETERMINE THE FAIR
3 MARKET VALUE OF THE PROPERTY NOT SOONER THAN THIRTY DAYS AFTER A COPY OF
4 THE NOTICE OF THE APPRAISAL IS PROVIDED TO EACH PARTY PURSUANT TO
5 SUBSECTION B OF THIS SECTION, WHETHER OR NOT AN OBJECTION TO THE APPRAISAL
6 IS FILED PURSUANT TO SUBSECTION B, PARAGRAPH 3 OF THIS SECTION. IN
7 ADDITION TO THE COURT-ORDERED APPRAISAL, THE COURT MAY CONSIDER ANY OTHER
8 EVIDENCE OF VALUE OFFERED BY A PARTY. AFTER THE HEARING BUT BEFORE
9 CONSIDERING THE MERITS OF THE PARTITION ACTION, THE COURT SHALL DETERMINE
10 THE FAIR MARKET VALUE OF THE PROPERTY AND PROVIDE NOTICE TO THE PARTIES OF
11 THE DETERMINATION OF VALUE.

12 12-3406. Cotenant buyout

13 A. IF ANY COTENANT REQUESTED PARTITION BY SALE AFTER THE
14 DETERMINATION OF VALUE PURSUANT TO SECTION 12-3405, SUBSECTION C, THE
15 COURT SHALL PROVIDE NOTICE TO THE PARTIES THAT ANY COTENANT, EXCEPT A
16 COTENANT THAT REQUESTED PARTITION BY SALE, MAY BUY ALL THE INTERESTS OF
17 THE COTENANTS THAT REQUESTED PARTITION BY SALE. NOT LATER THAN FORTY-FIVE
18 DAYS AFTER THE NOTICE IS PROVIDED, ANY COTENANT, EXCEPT A COTENANT THAT
19 REQUESTED PARTITION BY SALE, MAY FILE NOTICE WITH THE COURT THAT THE
20 COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED
21 PARTITION BY SALE. THE PURCHASE PRICE FOR EACH OF THE INTERESTS OF A
22 COTENANT THAT REQUESTED PARTITION BY SALE SHALL BE THE FAIR MARKET VALUE
23 OF THE ENTIRE PARCEL DETERMINED PURSUANT TO SECTION 12-3405, SUBSECTION C
24 MULTIPLIED BY THE COTENANT'S FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL.
25 AFTER EXPIRATION OF THE FORTY-FIVE-DAY PERIOD, THE FOLLOWING RULES APPLY:

26 1. IF ONLY ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE
27 COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL NOTIFY ALL THE
28 PARTIES OF THAT FACT.

29 2. IF MORE THAN ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE
30 COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL ALLOCATE THE
31 RIGHT TO BUY THOSE INTERESTS AMONG THE ELECTING COTENANTS BASED ON EACH
32 ELECTING COTENANT'S EXISTING FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL
33 DIVIDED BY THE TOTAL EXISTING FRACTIONAL OWNERSHIP OF ALL COTENANTS
34 ELECTING TO BUY AND PROVIDE NOTICE TO ALL THE PARTIES OF THAT FACT AND OF
35 THE PRICE TO BE PAID BY EACH ELECTING COTENANT.

36 3. IF NO COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS
37 THAT REQUESTED PARTITION BY SALE, THE COURT SHALL PROVIDE NOTICE TO ALL
38 THE PARTIES OF THAT FACT AND RESOLVE THE PARTITION ACTION PURSUANT TO
39 SECTION 12-3407.

40 B. IF THE COURT PROVIDES NOTICE TO THE PARTIES PURSUANT TO
41 SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION, THE COURT SHALL SET A DATE
42 NOT SOONER THAN NINETY DAYS AFTER THE DATE THE NOTICE WAS PROVIDED BY
43 WHICH ELECTING COTENANTS MUST PAY THEIR APPORTIONED PRICE TO THE COURT.
44 AFTER NINETY DAYS, THE FOLLOWING RULES APPLY:

1 1. IF ALL ELECTING COTENANTS TIMELY PAY THEIR APPORTIONED PRICE,
2 THE COURT SHALL ISSUE AN ORDER REALLOCATING ALL THE INTERESTS OF THE
3 COTENANTS AND DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS
4 ENTITLED TO THEM.

5 2. IF NO ELECTING COTENANT TIMELY PAYS ITS APPORTIONED PRICE, THE
6 COURT SHALL RESOLVE THE PARTITION ACTION PURSUANT TO SECTION 12-3407 AS IF
7 THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE NOT
8 PURCHASED.

9 3. IF ONE OR MORE BUT NOT ALL OF THE ELECTING COTENANTS FAILS TO
10 PAY THEIR APPORTIONED PRICE ON TIME, THE COURT, ON MOTION, SHALL PROVIDE
11 NOTICE TO THE ELECTING COTENANTS THAT PAID THEIR APPORTIONED PRICE OF THE
12 INTEREST REMAINING AND THE PRICE FOR THAT INTEREST.

13 C. NOT LATER THAN TWENTY DAYS AFTER THE COURT PROVIDES NOTICE
14 PURSUANT TO SUBSECTION B, PARAGRAPH 3 OF THIS SECTION, ANY COTENANT THAT
15 PAID MAY ELECT TO PURCHASE ALL OF THE REMAINING INTEREST BY PAYING THE
16 ENTIRE AMOUNT TO THE COURT. AFTER THE TWENTY-DAY PERIOD, THE FOLLOWING
17 RULES APPLY:

18 1. IF ONLY ONE COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING
19 INTEREST, THE COURT SHALL ISSUE AN ORDER REALLOCATING THE REMAINING
20 INTEREST TO THAT COTENANT. THE COURT SHALL PROMPTLY ISSUE AN ORDER
21 REALLOCATING THE INTERESTS OF ALL OF THE COTENANTS AND DISBURSE THE
22 AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THEM.

23 2. IF NO COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST,
24 THE COURT SHALL RESOLVE THE PARTITION ACTION PURSUANT TO SECTION 12-3407
25 AS IF THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE
26 NOT PURCHASED.

27 3. IF MORE THAN ONE COTENANT PAYS THE ENTIRE PRICE FOR THE
28 REMAINING INTEREST, THE COURT SHALL REAPPORTION THE REMAINING INTEREST
29 AMONG THOSE PAYING COTENANTS, BASED ON EACH PAYING COTENANT'S ORIGINAL
30 FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL DIVIDED BY THE TOTAL ORIGINAL
31 FRACTIONAL OWNERSHIP OF ALL COTENANTS THAT PAID THE ENTIRE PRICE FOR THE
32 REMAINING INTEREST. THE COURT SHALL PROMPTLY ISSUE AN ORDER REALLOCATING
33 ALL OF THE COTENANTS' INTERESTS, DISBURSE THE AMOUNTS HELD BY THE COURT TO
34 THE PERSONS ENTITLED TO THEM AND PROMPTLY REFUND ANY EXCESS PAYMENT HELD
35 BY THE COURT.

36 D. NOT LATER THAN FORTY-FIVE DAYS AFTER THE COURT PROVIDES NOTICE
37 TO THE PARTIES PURSUANT TO SUBSECTION A OF THIS SECTION, ANY COTENANT WHO
38 IS ENTITLED TO BUY AN INTEREST UNDER THIS SECTION MAY REQUEST THE COURT TO
39 AUTHORIZE THE SALE AS PART OF THE PENDING ACTION OF THE INTERESTS OF
40 COTENANTS NAMED AS RESPONDENTS AND SERVED WITH THE COMPLAINT BUT THAT DID
41 NOT APPEAR IN THE ACTION. IF THE COURT RECEIVES A TIMELY REQUEST PURSUANT
42 TO THIS SUBSECTION, THE COURT, AFTER A HEARING, MAY DENY THE REQUEST OR
43 AUTHORIZE THE REQUESTED ADDITIONAL SALE ON SUCH TERMS AS THE COURT
44 DETERMINES ARE FAIR AND REASONABLE, SUBJECT TO ALL OF THE FOLLOWING:

1 1. A SALE AUTHORIZED UNDER THIS SUBSECTION MAY OCCUR ONLY AFTER THE
2 PURCHASE PRICES FOR ALL INTERESTS SUBJECT TO SALE PURSUANT TO SUBSECTIONS
3 A, B AND C OF THIS SECTION HAVE BEEN PAID TO THE COURT AND THOSE INTERESTS
4 HAVE BEEN REALLOCATED AMONG THE COTENANTS AS PROVIDED IN SUBSECTIONS A, B
5 AND C OF THIS SECTION.

6 2. THE PURCHASE PRICE FOR THE INTEREST OF A NONAPPEARING COTENANT
7 IS BASED ON THE COURT'S DETERMINATION OF VALUE PURSUANT TO SECTION
8 12-3405, SUBSECTION C.

9 12-3407. Partition alternative

10 A. IF ALL THE INTERESTS OF ALL COTENANTS THAT REQUESTED PARTITION
11 BY SALE ARE NOT PURCHASED BY OTHER COTENANTS OR IF AFTER THE CONCLUSION OF
12 A BUYOUT PURSUANT TO SECTION 12-3406 A COTENANT REMAINS THAT HAS REQUESTED
13 PARTITION IN KIND, THE COURT SHALL ORDER PARTITION IN KIND UNLESS THE
14 COURT, AFTER CONSIDERING THE FACTORS PRESCRIBED IN SECTION 12-3408, FINDS
15 THAT PARTITION IN KIND WILL RESULT IN MANIFEST PREJUDICE TO THE COTENANTS
16 AS A GROUP. IN CONSIDERING WHETHER TO ORDER PARTITION IN KIND, THE COURT
17 SHALL APPROVE A REQUEST BY TWO OR MORE PARTIES TO HAVE THEIR INDIVIDUAL
18 INTERESTS AGGREGATED.

19 B. IF THE COURT DOES NOT ORDER PARTITION IN KIND PURSUANT TO
20 SUBSECTION A OF THIS SECTION, THE COURT SHALL ORDER PARTITION BY SALE
21 PURSUANT TO SECTION 12-3409. IF NO COTENANT REQUESTED PARTITION BY SALE,
22 THE COURT SHALL DISMISS THE ACTION. IF THE COURT ORDERS PARTITION IN KIND
23 PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT MAY REQUIRE THAT ONE
24 OR MORE COTENANTS PAY ONE OR MORE OTHER COTENANTS AMOUNTS SO THAT THE
25 PAYMENTS, TAKEN TOGETHER WITH THE VALUE OF THE IN-KIND DISTRIBUTIONS TO
26 THE COTENANTS, WILL MAKE THE PARTITION IN KIND JUST AND PROPORTIONATE IN
27 VALUE TO THE FRACTIONAL INTERESTS HELD. IF THE COURT ORDERS PARTITION IN
28 KIND PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT SHALL ALLOCATE TO
29 THE COTENANTS THAT ARE UNKNOWN, UNLOCATABLE OR THE SUBJECT OF A DEFAULT
30 JUDGMENT, IF THEIR INTERESTS WERE NOT BOUGHT OUT PURSUANT TO SECTION
31 12-3406, A PART OF THE PROPERTY REPRESENTING THE COMBINED INTERESTS OF
32 THESE COTENANTS AS DETERMINED BY THE COURT, AND THIS PART OF THE PROPERTY
33 SHALL REMAIN UNDIVIDED.

34 12-3408. Considerations for partition in kind

35 A. IN DETERMINING UNDER SECTION 12-3407 WHETHER PARTITION IN KIND
36 WOULD RESULT IN MANIFEST PREJUDICE TO THE COTENANTS AS A GROUP, THE COURT
37 SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

38 1. WHETHER THE HEIRS PROPERTY PRACTICABLY CAN BE DIVIDED AMONG THE
39 COTENANTS.

40 2. WHETHER PARTITION IN KIND WOULD APPORTION THE PROPERTY IN SUCH A
41 WAY THAT THE AGGREGATE FAIR MARKET VALUE OF THE PARCELS RESULTING FROM THE
42 DIVISION WOULD BE MATERIALLY LESS THAN THE VALUE OF THE PROPERTY IF IT
43 WERE SOLD AS A WHOLE, TAKING INTO ACCOUNT THE CONDITION UNDER WHICH A
44 COURT-ORDERED SALE LIKELY WOULD OCCUR.

1 3. EVIDENCE OF THE COLLECTIVE DURATION OF OWNERSHIP OR POSSESSION
2 OF THE PROPERTY BY A COTENANT AND ONE OR MORE PREDECESSORS IN TITLE OR
3 PREDECESSORS IN POSSESSION TO THE COTENANT WHO ARE OR WERE RELATIVES OF
4 THE COTENANT OR EACH OTHER.

5 4. A COTENANT'S SENTIMENTAL ATTACHMENT TO THE PROPERTY, INCLUDING
6 ANY ATTACHMENT ARISING BECAUSE THE PROPERTY HAS ANCESTRAL OR OTHER UNIQUE
7 OR SPECIAL VALUE TO THE COTENANT.

8 5. THE LAWFUL USE BEING MADE OF THE PROPERTY BY A COTENANT AND THE
9 DEGREE TO WHICH THE COTENANT WOULD BE HARMED IF THE COTENANT COULD NOT
10 CONTINUE THE SAME USE OF THE PROPERTY.

11 6. THE DEGREE TO WHICH THE COTENANTS HAVE CONTRIBUTED THEIR PRO
12 RATA SHARE OF THE PROPERTY TAXES, INSURANCE AND OTHER EXPENSES ASSOCIATED
13 WITH MAINTAINING OWNERSHIP OF THE PROPERTY OR HAVE CONTRIBUTED TO THE
14 PHYSICAL IMPROVEMENT, MAINTENANCE OR UPKEEP OF THE PROPERTY.

15 7. ANY OTHER RELEVANT FACTOR.

16 B. THE COURT MAY NOT CONSIDER ANY ONE FACTOR LISTED IN SUBSECTION A
17 OF THIS SECTION TO BE DISPOSITIVE WITHOUT WEIGHING THE TOTALITY OF ALL
18 RELEVANT FACTORS AND CIRCUMSTANCES.

19 12-3409. Open-market sale; sealed bids; auctions

20 A. IF THE COURT ORDERS A SALE OF HEIRS PROPERTY, THE SALE MUST BE
21 AN OPEN-MARKET SALE UNLESS THE COURT FINDS THAT A SALE BY SEALED BID OR AN
22 AUCTION WOULD BE MORE ECONOMICALLY ADVANTAGEOUS AND IN THE BEST INTEREST
23 OF THE COTENANTS AS A GROUP. IF THE COURT ORDERS AN OPEN-MARKET SALE AND
24 THE PARTIES, NOT LATER THAN TEN DAYS AFTER THE ENTRY OF THE ORDER, AGREE
25 ON A REAL ESTATE BROKER LICENSED IN THIS STATE TO OFFER THE PROPERTY FOR
26 SALE, THE COURT SHALL APPOINT THE BROKER AND ESTABLISH A REASONABLE
27 COMMISSION. IF THE PARTIES DO NOT AGREE ON A BROKER, THE COURT SHALL
28 APPOINT A DISINTERESTED REAL ESTATE BROKER LICENSED IN THIS STATE TO OFFER
29 THE PROPERTY FOR SALE AND SHALL ESTABLISH A REASONABLE COMMISSION. THE
30 BROKER SHALL OFFER THE PROPERTY FOR SALE IN A COMMERCIALY REASONABLE
31 MANNER AT A PRICE NOT LOWER THAN THE FAIR MARKET VALUE OF THE PROPERTY
32 DETERMINED PURSUANT TO SECTION 12-3405, SUBSECTION C AND ON THE TERMS AND
33 CONDITIONS ESTABLISHED BY THE COURT. IF THE BROKER APPOINTED PURSUANT TO
34 THIS SUBSECTION OBTAINS WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE
35 PROPERTY FOR AT LEAST THE DETERMINED FAIR MARKET VALUE, BOTH OF THE
36 FOLLOWING APPLY:

37 1. THE BROKER SHALL COMPLY WITH THE REPORTING REQUIREMENTS IN
38 SUBSECTION D OF THIS SECTION.

39 2. THE SALE MAY BE COMPLETED IN ACCORDANCE WITH STATE LAW OTHER
40 THAN THE PROVISIONS OF THIS SECTION.

41 B. IF THE BROKER APPOINTED PURSUANT TO SUBSECTION A OF THIS SECTION
42 DOES NOT OBTAIN WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE PROPERTY
43 FOR AT LEAST THE DETERMINED FAIR MARKET VALUE OF THE PROPERTY, THE COURT,
44 AFTER A HEARING, MAY DO ANY OF THE FOLLOWING:

45 1. APPROVE THE HIGHEST OUTSTANDING OFFER, IF ANY.

1 2. REDETERMINE THE VALUE OF THE HEIRS PROPERTY AND ORDER THAT THE
2 HEIRS PROPERTY CONTINUE TO BE OFFERED FOR AN ADDITIONAL TIME.

3 3. ORDER THAT THE HEIRS PROPERTY BE SOLD BY SEALED BIDS OR AT AN
4 AUCTION.

5 C. IF THE COURT ORDERS A SALE BY SEALED BIDS OR AT AN AUCTION, THE
6 COURT SHALL SET TERMS AND CONDITIONS OF THE SALE. IF THE COURT ORDERS AN
7 AUCTION, THE AUCTION MUST BE CONDUCTED PURSUANT TO TITLE 33, CHAPTER 6,
8 ARTICLE 2. IF A PURCHASER IS ENTITLED TO A SHARE OF THE PROCEEDS OF THE
9 SALE, THE PURCHASER IS ENTITLED TO A CREDIT AGAINST THE PRICE IN AN AMOUNT
10 EQUAL TO THE PURCHASER'S SHARE OF THE PROCEEDS.

11 D. UNLESS REQUIRED TO DO SO WITHIN A SHORTER TIME, A BROKER WHO IS
12 APPOINTED PURSUANT TO SUBSECTION A OF THIS SECTION TO OFFER HEIRS PROPERTY
13 FOR OPEN-MARKET SALE SHALL FILE A REPORT WITH THE COURT NOT LATER THAN
14 SEVEN DAYS AFTER RECEIVING AN OFFER TO PURCHASE THE HEIRS PROPERTY FOR AT
15 LEAST THE FAIR MARKET VALUE OF THE HEIRS PROPERTY. THE REPORT MUST
16 CONTAIN ALL OF THE FOLLOWING INFORMATION:

17 1. A DESCRIPTION OF THE PROPERTY TO BE SOLD TO EACH BUYER.

18 2. THE NAME OF EACH BUYER.

19 3. THE PROPOSED PURCHASE PRICE.

20 4. THE TERMS AND CONDITIONS OF THE PROPOSED SALE, INCLUDING THE
21 TERMS OF ANY OWNER FINANCING.

22 5. THE AMOUNTS TO BE PAID TO LIENHOLDERS.

23 6. A STATEMENT OF CONTRACTUAL OR OTHER ARRANGEMENTS OR CONDITIONS
24 OF THE BROKER'S COMMISSION.

25 7. ANY OTHER MATERIAL FACTS RELEVANT TO THE SALE.

26 12-3410. Commissioners

27 IF THE COURT APPOINTS COMMISSIONERS PURSUANT TO SECTION 12-1215,
28 EACH COMMISSIONER, IN ADDITION TO THE REQUIREMENTS AND DISQUALIFICATIONS
29 APPLICABLE TO COMMISSIONERS, MUST BE DISINTERESTED AND IMPARTIAL AND NOT
30 BE A PARTY TO OR A PARTICIPANT IN THE ACTION.

31 12-3411. Uniformity of application and construction

32 IN APPLYING AND CONSTRUING THIS CHAPTER, THE COURTS SHALL CONSIDER
33 THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT
34 MATTER AMONG THE STATES THAT ENACT THE UNIFORM PARTITION OF HEIRS PROPERTY
35 ACT.

36 12-3412. Relation to electronic signatures in global and
37 national commerce act

38 THIS SECTION MODIFIES, LIMITS AND SUPERSEDES THE ELECTRONIC
39 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (15 UNITED STATES CODE
40 SECTIONS 7001 THROUGH 7031) BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE
41 SECTION 101(c) OF THAT ACT (15 UNITED STATES CODE SECTION 7001(c)) OR
42 AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION
43 103(b) OF THAT ACT (15 UNITED STATES CODE SECTION 7003(b)).

1 Sec. 2. Section 14-3911, Arizona Revised Statutes, is amended to
2 read:

3 14-3911. Partition for purpose of distribution

4 When two or more heirs or devisees are entitled to distribution of
5 undivided interests in any real or personal property of the estate, the
6 personal representative or one or more of the heirs or devisees may
7 petition the court ~~prior to~~ BEFORE the formal or informal closing of the
8 estate, to make partition. After notice to the interested heirs or
9 devisees, the court shall partition the property EITHER:

10 1. In the same manner as provided by the law for civil actions of
11 partition. The court may direct the personal representative to sell any
12 property ~~which~~ THAT cannot be partitioned without prejudice to the owners
13 and ~~which~~ THAT cannot conveniently be allotted to any one party.

14 2. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
15 SECTION, PURSUANT TO TITLE 12, CHAPTER 27.