

HOUSE BILL No. 1324

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-17.

Synopsis: Uniform partition of heirs property act. Provides for the partition of heirs property.

Effective: July 1, 2019.

Negele, Mahan

January 14, 2019, read first time and referred to Committee on Judiciary.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1324

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

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

1 SECTION 1. IC 32-17-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) **Except as**
3 **provided in IC 32-17-4.5**, the following persons may compel partition
4 of land held in joint tenancy or tenancy in common as provided under
5 this chapter:

- 6 (1) A person that holds an interest in the land as a joint tenant or
7 tenant-in-common either:
 - 8 (A) in the person's own right; or
 - 9 (B) as executor or trustee.
- 10 (2) If the sale of the estate of a decedent who held an interest in
11 the land as a joint tenant or tenant in common is necessary, the
12 decedent's administrator or executor.

13 (b) A trustee, an administrator, or an executor may be made a
14 defendant in an action for the partition of real estate to answer as to any
15 interest the trustee, administrator, or executor has in the real estate.

16 SECTION 2. IC 32-17-4-2.5, AS AMENDED BY P.L.45-2016,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]: Sec. 2.5. (a) Not later than forty-five (45) days after the
2 court has acquired jurisdiction over all the parties who have an interest
3 in the property that is the subject of the action **described in section 1**
4 **of this chapter**, the court shall refer the matter to mediation in
5 accordance with the Indiana rules of alternative dispute resolution.

6 (b) Except as provided in subsection (c), mediation of the case may
7 not begin until an appraiser files an appraisal report with the court.

8 (c) If each party waives the appraisal of the property, the case may
9 move to mediation without the filing of an appraisal report.

10 (d) In its order referring the matter for mediation, the court shall
11 advise the parties:

12 (1) that the real or personal property will be sold if the parties are
13 unable to reach an agreement not later than sixty (60) days after
14 the order is issued; and

15 (2) that the parties may agree upon a method of the sale of the
16 property, and if the parties do not agree upon a method of the sale
17 of the property, the property may be sold at public auction or by
18 the sheriff under subsection (g).

19 (e) Except if the parties agree to waive the appraisal of the property,
20 not later than thirty (30) days after the court acquires jurisdiction under
21 subsection (a), the court shall appoint a licensed real estate appraiser
22 to appraise the property. The appraiser shall file the appraisal with the
23 court.

24 (f) After receiving the appraisal, the court shall notify the parties of
25 the appraised value of the property.

26 (g) If an agreed settlement is not reached in mediation or if the
27 parties agree upon a method of sale, the court shall not later than thirty
28 (30) days after the date the mediator files a report with the court that
29 the mediation was not successful, or the parties file their agreement
30 establishing the method of sale:

31 (1) order the property to be sold using the method that all the
32 parties agree upon; or

33 (2) order the parties to select an auctioneer to sell the property. If
34 the parties fail to select an auctioneer not later than thirty (30)
35 days after the court's order to select an auctioneer, the court shall
36 order the sheriff to sell the property in the same manner that
37 property is sold at execution under IC 34-55-6.

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



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

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

8 (j) Any person who has paid a tax or special assessment on the
 9 property is entitled to pro rata reimbursement from the proceeds of the
 10 sale.

11 (k) Any person may advertise a sale under this section at the
 12 person's own expense, but is not entitled to reimbursement for these
 13 expenses.

14 (l) After deduction of the amounts described in subsections (h), (i),
 15 and (j) and the reasonable expenses of the sale, the court shall divide
 16 the proceeds of the sale among the remaining property owners in
 17 proportion to their ownership interest.

18 (m) If a party having an ownership interest in the property becomes
 19 the successful purchaser of the property either through agreed
 20 settlement or through auction, that person shall be given a full credit
 21 based on the percentage of the person's interest in the property before
 22 the purchase.

23 (n) As used in this subsection, "real estate professional" has the
 24 meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that
 25 some or all of the property be sold at auction and, at any time before
 26 the property is sold at auction, all parties inform the court in writing
 27 that they:

- 28 (1) wish to sell some or all of the property through a real estate
- 29 professional;
- 30 (2) have jointly selected a real estate professional; and
- 31 (3) have agreed upon a listing price for the property;

32 the court shall rescind its order that the property, or a part of the
 33 property, be sold at auction and permit the property to be sold through
 34 a real estate professional. If some or all of the property has not been
 35 sold at the expiration of the listing agreement with the real estate
 36 professional, upon petition by any party, the court shall order the
 37 property to be sold at auction in accordance with subsection (h).

38 SECTION 3. IC 32-17-4.5 IS ADDED TO THE INDIANA CODE
 39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2019]:

41 **Chapter 4.5. Uniform Partition of Heirs Property**

42 **Sec. 1. (a) This chapter applies to partition actions filed after**



1 **June 30, 2019.**

2 (b) In an action to partition real property under IC 32-17-4, the
3 court shall determine whether the property is heirs property as
4 defined in section 6 of this chapter. If the court determines that the
5 property is heirs property, the property must be partitioned under
6 this chapter unless all the cotenants consent in writing otherwise.

7 **Sec. 2.** As used in this chapter, "ascendant" means an individual
8 who precedes another individual in lineage, in the direct line of
9 ascent from the other individual.

10 **Sec. 3.** As used in this chapter, "collateral" means an individual
11 who is related to another individual under the law of intestate
12 succession under IC 29-1-2 but who is not the other individual's
13 ascendant or descendant.

14 **Sec. 4.** As used in this chapter, "descendant" means an
15 individual who follows another individual in lineage, in the direct
16 line of a descent from the other individual.

17 **Sec. 5.** As used in this chapter, "determination of value" means
18 a court order determining the fair market value of heirs property
19 under section 11 or 15 of this chapter or adopting the valuation of
20 the property agreed to by all cotenants.

21 **Sec. 6.** As used in this chapter, "heirs property" means real
22 property held in tenancy in common that satisfies all of the
23 following requirements as of the filing of a partition action under
24 this chapter:

- 25 (1) There is no recorded agreement binding all the cotenants
26 that governs the partition of the property.
27 (2) One (1) or more of the cotenants acquired title from a
28 relative, whether living or deceased.
29 (3) Twenty percent (20%) or more of the:
30 (A) interests are held by cotenants who are relatives;
31 (B) interests are held by an individual who acquired title
32 from a relative, whether living or deceased; or
33 (C) cotenants are relatives.

34 **Sec. 7.** As used in this chapter, "partition by sale" means a court
35 ordered sale of the entire heirs property, whether by auction,
36 sealed bids, or open market sale conducted under section 15 of this
37 chapter.

38 **Sec. 8.** As used in this chapter, "partition in kind" means the
39 division of heirs property into physically distinct and separately
40 titled parcels.

41 **Sec. 9.** As used in this chapter, "relative" means an ascendant,
42 descendant, or collateral or an individual otherwise related to



1 another individual by blood, marriage, adoption, or state law other
2 than this chapter.

3 **Sec. 10. (a) This chapter does not limit or affect the method by**
4 **which service of a complaint in a partition action may be made.**

5 **(b) If the plaintiff in a partition action seeks an order of notice**
6 **by publication and the court determines that the property may be**
7 **heirs property, the plaintiff, not later than ten (10) days after the**
8 **court's ruling, shall post and maintain while the action is pending**
9 **a conspicuous sign on the property that is the subject of this action.**

10 **The sign must:**

11 **(1) state that the action has commenced; and**

12 **(2) identify the:**

13 **(A) name and address of the court; and**

14 **(B) common designation by which the property is known.**

15 **The court may require the plaintiff to publish on the sign the name**
16 **of the plaintiff and all known defendants.**

17 **Sec. 11. (a) Except as otherwise provided in subsections (b) and**
18 **(c), if the court determines that the property that is the subject of**
19 **the partition action is heirs property, the court shall determine the**
20 **fair market value of the property by ordering an appraisal**
21 **pursuant to subsection (d).**

22 **(b) If all cotenants have agreed to the value of the property or**
23 **to another method of valuation, the court shall adopt that value or**
24 **the value produced by the agreed method of valuation.**

25 **(c) If the court determines that the evidentiary value of an**
26 **appraisal is outweighed by the cost of the appraisal, the court, after**
27 **an evidentiary hearing, shall determine the fair market value of the**
28 **property and send notice to the parties of the value.**

29 **(d) If the court orders an appraisal, the court shall appoint a**
30 **disinterested real estate appraiser licensed in Indiana to determine**
31 **the fair market value of the property assuming sole ownership of**
32 **the fee simple estate. On completion of the appraisal, the appraiser**
33 **shall file a sworn or verified appraisal with the court.**

34 **(e) If an appraisal is conducted under subsection (d), not later**
35 **than ten (10) days after the appraisal is filed, the court shall send**
36 **notice to each party with a known address, stating:**

37 **(1) the appraised fair market value of the property;**

38 **(2) that the appraisal is available at the clerk's office; and**

39 **(3) that a party may file with the court an objection to the**
40 **appraisal not later than thirty (30) days after the notice is**
41 **sent, providing the grounds for the objection.**

42 **(f) If an appraisal is filed with the court under subsection (d),**



1 the court shall conduct a hearing to determine the fair market
2 value of the property not earlier than thirty (30) days after a copy
3 of the notice of the appraisal is sent to each party under subsection
4 (e), whether or not an objection to the appraisal is filed under
5 subsection (e)(3). In addition to the court ordered appraisal, the
6 court may consider any other evidence of value offered by a party.

7 (g) After a hearing under subsection (f), but before considering
8 the merits of the partition action, the court shall determine the fair
9 market value of the property and notify the parties of the value.

10 Sec. 12. (a) If any cotenant requested partition by sale, after the
11 determination of value under section 11 of this chapter, the court
12 shall notify the parties that any cotenant, except a cotenant that
13 requested partition by sale, may buy all the interests of the
14 cotenants that requested partition by sale.

15 (b) Not later than forty-five (45) days after notice is sent under
16 subsection (a), any cotenant except a cotenant that requested
17 partition by sale may give notice to the court that the cotenant
18 elects to buy all the interests of the cotenants that requested
19 partition by sale.

20 (c) The purchase price for each of the interests of a cotenant
21 that requested partition by sale is the value of the entire parcel
22 determined under section 11 of this chapter multiplied by the
23 cotenant's fractional ownership of the entire parcel.

24 (d) After expiration of the period in subsection (b), the following
25 rules apply:

26 (1) The court shall notify all parties if only one (1) cotenant
27 elects to buy all the interests of the cotenants that requested
28 partition by sale.

29 (2) If more than one (1) cotenant elects to buy all the interests
30 of the cotenants that requested partition by sale, the court
31 shall allocate the right to buy those interests among the
32 electing cotenants based on each electing cotenant's existing
33 fractional ownership of the entire parcel divided by the total
34 existing fractional ownership of all cotenants electing to buy
35 and send notice to all parties of that fact and of the price to be
36 paid by each electing cotenant.

37 (3) The court shall notify all parties if no cotenant elects to
38 buy all the interests of the cotenants that requested partition
39 by sale, and resolve the partition action under section 13(a)
40 and 13(b) of this chapter.

41 (e) If the court sends notice to the parties under subsection
42 (d)(1) or (d)(2), the court shall set a date, not earlier than sixty (60)



1 days after the date the notice was sent, by which electing cotenants
 2 must pay their apportioned price into the court. After that date,
 3 the following rules apply:

4 (1) If all electing cotenants timely pay the apportioned price
 5 into court, the court shall issue an order reallocating all the
 6 interests of the cotenants and disburse the amounts held by
 7 the court to the persons entitled to them.

8 (2) If no electing cotenant timely pays its apportioned price,
 9 the court shall resolve the partition action under section 13(a)
 10 and 13(b) of this chapter as if the interests of the cotenants
 11 that requested partition by sale were not purchased.

12 (3) If one (1) or more but not all of the electing cotenants fail
 13 to pay their apportioned price on time, the court shall notify
 14 the electing cotenants that paid their apportioned price of the
 15 interest remaining and the price for that interest.

16 (f) Not later than twenty (20) days after the court gives notice
 17 under subsection (e)(3), any cotenant that paid its apportioned
 18 price may elect to purchase all of the remaining interest by paying
 19 the entire price into the court. After the twenty (20) day period, the
 20 following rules apply:

21 (1) If only one (1) cotenant pays the entire price for the
 22 remaining interest, the court shall:

23 (A) issue an order reallocating the remaining interest to
 24 that cotenant;

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

27 (C) disburse the amounts held by it to the persons entitled
 28 to the amounts.

29 (2) If no cotenant pays the entire price for the remaining
 30 interest, the court shall resolve the partition action under
 31 section 13(a) and 13(b) of this chapter as if the interests of the
 32 cotenants that requested partition by sale were not purchased.

33 (3) If more than one (1) cotenant pays the entire price for the
 34 remaining interest, the court shall:

35 (A) reapportion the remaining interest amount of those
 36 paying cotenants, based on each paying cotenant's original
 37 fractional ownership of the entire parcel divided by the
 38 total original fractional ownership of all cotenants that
 39 paid the entire price for the remaining interest;

40 (B) issue promptly an order reallocating all of the
 41 cotenants' interests;

42 (C) disburse the amounts held by it to the persons entitled



- 1 to them; and
- 2 (D) promptly refund any excess payment held by the court.
- 3 (g) Not later than forty-five (45) days after the court sends
- 4 notice to the parties under subsection (a), any cotenant entitled to
- 5 buy an interest under this section may request the court to
- 6 authorize the sale as part of the pending action of the interests of
- 7 cotenants named as defendants and served with the complaint but
- 8 that did not appear in the action.
- 9 (h) If the court receives a timely request under subsection (g),
- 10 the court, after hearing, may deny the request or authorize the
- 11 requested additional sale on such terms as the court determines are
- 12 fair and reasonable, subject to the following limitations:
- 13 (1) A sale authorized under this subsection may occur only
- 14 after the purchase prices for all interests subject to sale under
- 15 subsections (a) through (f) have been paid into the court and
- 16 those interests have been reallocated to the cotenants as
- 17 provided in those subsections.
- 18 (2) The purchase price for the interest of a nonappearing
- 19 cotenant is based on the court's determination of value under
- 20 section 11 of this chapter.
- 21 Sec. 13. (a) If:
- 22 (1) all the interests of all cotenants that request partition by
- 23 sale are not purchased by other cotenants pursuant to section
- 24 12 of this chapter; or
- 25 (2) after conclusion of the buyout under section 12 of this
- 26 chapter, a cotenant remains that has requested partition in
- 27 kind;
- 28 the court shall order partition in kind unless the court, after
- 29 consideration of the factors listed in section 14 of this chapter, finds
- 30 that partition in kind will result in great prejudice to the cotenants
- 31 as a group.
- 32 (b) In considering whether to order partition in kind, the court
- 33 shall approve a request by two (2) or more parties to have their
- 34 individual interests aggregated.
- 35 (c) If the court does not order partition in kind under subsection
- 36 (a), the court shall order partition by sale pursuant to section 15 of
- 37 this chapter or, if no cotenant requested partition by sale, the court
- 38 shall dismiss the action.
- 39 (d) If the court orders partition in kind pursuant to subsection
- 40 (a), the court may require that one (1) or more cotenants pay one
- 41 (1) or more other cotenants amounts so that the payments, taken
- 42 together with the value of the in kind distributions to the cotenants,



1 will make the partition in kind just and proportionate in value to
2 the fractional interests held.

3 (e) If the court orders partition in kind, the court shall allocate
4 to the cotenants that are unknown, unlocatable, or the subject of a
5 default judgment, if their interests were not bought out pursuant
6 to section 12 of this chapter, a part of the property representing the
7 combined interests of these cotenants as determined by the court.

8 Sec. 14. (a) In determining under section 13(a) of this chapter
9 whether partition in kind would result in great prejudice to the
10 cotenants as a group, the court shall consider the following:

11 (1) Whether the heirs property practicably can be divided
12 among the cotenants.

13 (2) Whether partition in kind would apportion the property
14 in such a way that the aggregate fair market value of the
15 parcels resulting from the division would be materially less
16 than the value of the property if it were sold as a whole,
17 taking into account the condition under which a court ordered
18 sale likely would occur.

19 (3) Evidence of the collective duration of ownership or
20 possession of the property by a cotenant and one (1) or more
21 predecessors in title or predecessors in possession to the
22 cotenant who are or were relatives of the cotenant or each
23 other.

24 (4) A cotenant's sentimental attachment to the property,
25 including any attachment arising because the property has
26 ancestral or other unique or special value to the cotenant.

27 (5) The lawful use being made of the property by a cotenant
28 and the degree to which the cotenant would be harmed if the
29 cotenant could not continue the same use of the property.

30 (6) The degree to which the cotenants have contributed their
31 pro rata share of the property taxes, insurance, and other
32 expenses associated with maintaining ownership of the
33 property or have contributed to the physical improvement,
34 maintenance, or upkeep of the property.

35 (7) Any other factor the court considers relevant.

36 (b) The court may not consider any one (1) factor in subsection
37 (a) to be dispositive without weighing the totality of all relevant
38 factors and circumstances.

39 Sec. 15. (a) If the court orders a sale of heirs property, the sale
40 must be an open market sale unless the court finds that a sale by
41 sealed bids or an action would be more economically advantageous
42 and in the best interests of the cotenants of the group.



1 (b) If the court orders an open market sale and the parties, not
 2 later than ten (10) days after the entry of the order, agree on a real
 3 estate broker licensed in Indiana to offer the property for sale, the
 4 court shall appoint the broker and establish a reasonable
 5 commission. If the parties do not agree on a broker, the court shall
 6 appoint a disinterested real estate broker licensed in Indiana to
 7 offer the property for sale and shall establish a reasonable
 8 commission. The broker shall offer the property for sale in a
 9 commercially reasonable manner at a price not lower than the
 10 determination of value and on the terms and conditions established
 11 by the court.

12 (c) If the broker appointed under subsection (b) obtains within
 13 a reasonable time an offer to purchase the property for at least the
 14 determination of value:

- 15 (1) the broker shall comply with the reporting requirements
- 16 under section 16 of this chapter; and
- 17 (2) the sale may be completed in accordance with state law
- 18 other than this chapter.

19 (d) If the broker appointed under subsection (b) does not obtain
 20 within a reasonable time an offer to purchase the property for at
 21 least the determination of value, the court, after a hearing, may:

- 22 (1) approve the highest outstanding offer, if any;
- 23 (2) redetermine the value of the property and order that the
- 24 property continue to be offered for an additional time; or
- 25 (3) order that the property be sold by sealed bids or at
- 26 auction.

27 (e) If the court orders a sale by sealed bids or at auction, the
 28 court shall set terms and conditions of the sale. If the court orders
 29 an auction, the auction must be conducted pursuant to IC 32-30-10.

30 (f) If a purchaser is entitled to a share of the proceeds of the
 31 sale, the purchaser is entitled to a credit against the price in an
 32 amount equal to the purchaser's share of the proceeds.

33 **Sec. 16. (a)** A broker appointed under section 15(b) to offer heirs
 34 property for open market sale shall file a report with the court not
 35 later than seven (7) days after receiving an offer to purchase the
 36 property for at least the value determined under section 11 or 15
 37 of this chapter.

38 (b) The report required by subsection (a) must contain the
 39 following information:

- 40 (1) A description of the property to be sold to each buyer.
- 41 (2) The name of the buyer.
- 42 (3) The proposed purchase price.



- 1 **(4) The terms and conditions of the proposed sale, including**
- 2 **the terms of any owner financing.**
- 3 **(5) The amounts to be paid to lienholders.**
- 4 **(6) A statement of contractual or other arrangements or**
- 5 **conditions of the broker's commission.**
- 6 **(7) Any other material facts relevant to the sale.**
- 7 **Sec. 17. In applying and construing this chapter, consideration**
- 8 **must be given to the need to promote uniformity of the law with**
- 9 **respect to its subject matter among states that enact it.**
- 10 **Sec. 18. This chapter:**
- 11 **(1) modifies, limits, and supersedes the Electronic Signatures**
- 12 **in Global and National Commerce Act, 15 U.S.C. 7001 et seq.;**
- 13 **but**
- 14 **(2) does not:**
- 15 **(A) modify, limit, or supersede Section 101(c) of that act;**
- 16 **or**
- 17 **(B) authorize electronic delivery of any of the notices**
- 18 **described in Section 103(b) of the Electronic Signatures in**
- 19 **Global and National Commerce Act, 15 U.S.C. 7003(b).**

