

AN ACT

To amend sections 5307.04, 5307.05, 5307.06, 5307.07, 5307.08, 5307.09, 5307.12, 5307.15, 5307.17, and 5307.18 of the Revised Code to change the qualifications and required number of commissioners in partition actions.

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

SECTION 1. That sections 5307.04, 5307.05, 5307.06, 5307.07, 5307.08, 5307.09, 5307.12, 5307.15, 5307.17, and 5307.18 of the Revised Code be amended to read as follows:

Sec. 5307.04. If the court of common pleas finds that the plaintiff in an action for partition has a legal right to any part of the estate, it shall order partition ~~thereof~~ OF THE ESTATE in favor of the plaintiff or all INTERESTED parties ~~in interest~~, appoint ~~three~~ ONE SUITABLE disinterested ~~and judicious freeholders of the vicinity~~ PERSON to be ~~commissioners~~ THE COMMISSIONER to make the partition, and ~~order~~ ISSUE a writ of partition ~~to issue~~. The court on its own motion may, and upon motion of a party or any other interested person shall, appoint one or two additional suitable persons to be commissioners. If the estate to be partitioned extends beyond the county in which the action is commenced, the court may appoint a separate commissioner or commissioners, not to exceed three, to make the partition of that portion of the estate located in the other county.

Sec. 5307.05. ~~The~~ A writ of partition issued under section 5307.04 Of the Revised Code may be directed to the sheriff of any of the counties in which any part of the estate lies; and shall command ~~such~~ THE sheriff that, by the oaths of the COMMISSIONER OR commissioners ~~who are provided for in section 5307.04 of the Revised Code, he, the sheriff~~ shall cause to be set off and divided to the plaintiff or each INTERESTED party ~~in interest, such~~ WHATEVER part and proportion of the estate as the court of common pleas orders.

The oaths of the COMMISSIONER OR commissioners may be administered by the sheriff.

Sec. 5307.06. In making a partition, the COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~ shall view and examine the estate; and, on their oaths; AND having due regard to the improvements, situation, and quality of the different parts, set it apart in ~~such~~ lots as THAT will be most advantageous and equitable.

If the COMMISSIONER OR commissioners set ~~such~~ THE estate apart in lots, it shall be surveyed and platted in compliance with sections 711.001 to 711.15 of the Revised Code and with rules adopted pursuant to those sections.

Sec. 5307.07. When partition of more than one tract is demanded, the COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~ shall set off to each plaintiff or INTERESTED party ~~in interests his~~ the plaintiff's or interested party's proper proportion in each of the several tracts unless the tracts are owned by the same proprietors in like proportion in each tract, in which case the share of any proprietor, in all the tracts, may be set off to ~~him~~ the proprietor according to the best discretion of ~~such~~ THE COMMISSIONER OR commissioners. If the COMMISSIONER OR commissioners divide any tract, it shall be surveyed and platted in compliance with sections 711.001 to 711.15 of the Revised Code and with rules adopted pursuant to those sections.

Sec. 5307.08. Before a writ of partition is issued under section 5307.04 Of the Revised Code, the person of whom partition is demanded may appear in the court of common pleas in person or by attorney; and consent to a partition of the estate agreeable to the prayer and facts set forth in the petition, which amicable partition, when made and recorded, shall be valid and binding between the parties to the partition. In ~~such~~ cases; in which a requested partition is consented to under this section and in all cases in which the lands are divided among the parties by the commissioner or commissioners ~~provided for in section 5307.04 of the Revised Code~~, the court shall order the sheriff to execute and deliver a deed to each person entitled to a deed for the portion set off and assigned to ~~him~~ the person. Land divided pursuant to this section shall be surveyed and platted in compliance with sections 711.001 to 711.15 of the Revised Code and with rules adopted pursuant to those sections.

Sec. 5307.09. When the COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~ are of opinion that the estate cannot be divided according to the demand of the writ of partition without manifest injury to its value, ~~they~~ the commissioner or commissioners shall return that fact to the court of common pleas with a just valuation of the estate. If ~~such~~ THE court approves the return; and IF one or

more of the parties elects to take the estate at ~~such~~ THE appraised value, it shall be adjudged to them, upon their paying to the other parties their proportion of its appraised value, according to their respective rights, or securing it as provided in section 5307.10 of the Revised Code.

Sec. 5307.12. A sale of an estate under section 5307.11 of the Revised Code shall be made at the door of the courthouse, unless for good cause the court of common pleas directs it to be made on the premises. The sale shall be conducted as upon execution, except that IT is unnecessary to appraise the estate; but it shall not be sold for less than two thirds of the value returned by the COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~. Unless by special order, on good cause shown, the court directs the entire payment to be made in cash, the purchase money shall be payable one third on the day of sale, one third in one year after the sale, and one third in two years ~~thereafter~~ after the sale, with interest.

Sec. 5307.15. When the estate has been offered once and not sold, alias writs for its sale may issue as often as need be. The court of common pleas may order a revaluation by UP TO three SUITABLE disinterested ~~freeholders of the vicinity~~ PERSONS and direct a sale of the estate at not less than two thirds of ~~such~~ THE revaluation, or, if deemed for the interest of the parties, the court may order a sale without ~~such~~ A revaluation, at not less than a sum it fixes.

Sec. 5307.17. (A) When a widow is entitled to dower in an estate of which partition is sought, dower must be assigned her ~~therein~~ IN THE ESTATE, except in the following cases:

~~(A)~~(1) When an assignment of dower already has been made;

~~(B)~~(2) When, by answer, she has elected to be endowed out of the proceeds of a sale of the estate, and the COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~ do not make partition; but return a valuation of it;

~~(C)~~ (3) When the right of dower extends only to an undivided interest in the estate.

(B) In the latter case cases in which the right of dower extends only to an undivided interest in the estate, and in cases in which an undivided interest is subject to a life estate, and the tenant for life has not, by answer, elected to receive the value of his the tenant for life's estate out of the proceeds of a sale of such interest, if an appraisement of the estate is to be returned, the commissioner or commissioners may assign the dower; or set off the life estate, or, if they the commissioner or commissioners find it for the interest of the parties to do so, they the commissioner or commissioners

may appraise the whole interest, and the widow and the tenant for life shall receive the value of their interests out of the proceeds of a sale of it.

Sec. 5307.18. The COMMISSIONER OR commissioners ~~provided for in section 5307.04 of the Revised Code~~ shall set off to a widow her dower in the estate under section 5307.17 of the Revised Code. In the performance of that duty ~~they,~~ the commissioner or commissioners shall be governed by, and the proceedings shall conform to, sections 5305.01 to 5305.22, ~~inclusive,~~ of the Revised Code.

SECTION 2. That existing sections 5307.04, 5307.05, 5307.06, 5307.07, 5307.08, 5307.09, 5307.12, 5307.15, 5307.17, and 5307.18 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

S. B. No. 88

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____