



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

SB2274

Introduced 1/15/2004, by Dale A. Righter

SYNOPSIS AS INTRODUCED:

735 ILCS 5/17-101	from Ch. 110, par. 17-101
735 ILCS 5/17-105	from Ch. 110, par. 17-105
735 ILCS 5/17-106	from Ch. 110, par. 17-106
735 ILCS 5/17-112	from Ch. 110, par. 17-112
735 ILCS 5/17-107 rep.	
735 ILCS 5/17-108 rep.	
735 ILCS 5/17-109 rep.	from Ch. 110, par. 17-109
735 ILCS 5/17-110 rep.	from Ch. 110, par. 17-110
735 ILCS 5/17-111 rep.	from Ch. 110, par. 17-111
735 ILCS 5/17-116 rep.	from Ch. 110, par. 17-116
735 ILCS 5/17-117 rep.	from Ch. 110, par. 17-117
765 ILCS 525/Act rep.	

Amends the Code of Civil Procedure. Adds other forms of co-ownership to the types of holdings in which a person having an interest may petition the court to compel a partition of the premises or part of the premises. Provides that ownership of an interest in minerals by a co-owner of an interest in the surface does not prevent partition of the surface. Provides that ownership of an interest in some, but not all, of the mineral estate by a co-owner of an interest in other minerals does not prevent the partition of the co-owned mineral estate. Removes the current commissioners and allows the court to appoint a disinterested commissioner and surveyor to assist in the division of a premises. Allows the court (instead of the commissioners) to set off the homestead, if any party to the action is entitled to an estate of the homestead in the premises. Removes language concerning the sale of a premises not susceptible to division and the valuation of a premises. Makes other changes. Repeals the Oil and Gas Recovery Act. Effective immediately.

LRB093 14937 LCB 40505 b

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 17-101, 17-105, 17-106, and 17-112 as
6 follows:

7 (735 ILCS 5/17-101) (from Ch. 110, par. 17-101)

8 Sec. 17-101. Compelling partition. When lands, tenements,
9 or hereditaments are held in joint tenancy or tenancy in common
10 or other form of co-ownership and regardless of,~~whether such~~
11 ~~right or title is derived by purchase, legacy or descent, or~~
12 whether any or all of the claimants are minors or adults, any
13 one or more of the persons interested therein may compel a
14 partition thereof by a verified complaint in the circuit court
15 of the county where the premises or part of the premises are
16 situated. If lands, tenements or hereditaments held in joint
17 tenancy or tenancy in common are situated in 2 or more
18 counties, the venue may be in any one of such counties, and the
19 circuit court of any such county first acquiring jurisdiction
20 shall retain sole and exclusive jurisdiction. Ownership of an
21 interest in the surface of lands, tenements, or hereditaments
22 by a co-owner of an interest in minerals underlying the surface
23 does not prevent partition of the mineral estate. This
24 amendatory Act of the 92nd General Assembly is a declaration of
25 existing law and is intended to remove any possible conflicts
26 or ambiguities, thereby confirming existing law pertinent to
27 the partition of interests in minerals and applies to all
28 actions for the partition of minerals now pending or filed on
29 or after the effective date of this amendatory Act of the 92nd
30 General Assembly. Nothing in this amendatory Act of the 92nd
31 General Assembly shall be construed as allowing an owner of a
32 mineral interest in coal to mine and remove the coal by the

1 surface method of mining without first obtaining the consent of
2 all of the owners of the surface to the mining and removal of
3 coal by the surface method of mining. Ownership of an interest
4 in minerals by a co-owner of an interest in the surface does
5 not prevent partition of the surface. The ownership of an
6 interest in some, but not all, of the mineral estate by a
7 co-owner of an interest in other minerals does not prevent the
8 partition of the co-owned mineral estate.

9 (Source: P.A. 92-379, eff. 8-16-01.)

10 (735 ILCS 5/17-105) (from Ch. 110, par. 17-105)

11 Sec. 17-105. Judgment. The court shall ascertain and
12 declare the rights, titles and interest of all the parties in
13 such action, the plaintiffs as well as the defendants, and
14 shall enter judgment according to the rights of the parties.
15 After entry of judgment adjudicating the rights, titles, and
16 interests of the parties, the court upon further hearing shall
17 determine whether or not the premises or any part thereof can
18 be divided among the parties without manifest prejudice to the
19 parties in interest. If the court finds that a division can be
20 made, then the court shall enter further judgment fairly and
21 impartially dividing the premises among the parties with or
22 without owelty. If the court finds that the whole or any part
23 of the premises sought to be partitioned cannot be divided
24 without manifest prejudice to the owners thereof, then the
25 court shall order the premises not susceptible of division to
26 be sold at public sale in such manner and upon such terms and
27 notice of sale as the court directs. If the court orders the
28 sale of the premises or any part thereof, the court shall fix
29 the value of the premises to be sold. No sale may be approved
30 for less than two-thirds of the total amount of the valuation
31 of the premises to be sold. If it appears to the court that any
32 of the premises will not sell for two-thirds of the amount of
33 the valuation thereof, the court upon further hearing may
34 either revalue the premise and approve the sale or order a new
35 sale.

1 (Source: P.A. 82-280.)

2 (735 ILCS 5/17-106) (from Ch. 110, par. 17-106)

3 Sec. 17-106. Appointment of commissioner and surveyor.

4 ~~Appointment of Commissioners.~~ The court in its discretion, sua
5 sponte, or on the motion of any interested party, may appoint a
6 disinterested commissioner who, subject to direction by the
7 court, shall report to the court in writing under oath as to
8 whether or not the premises are subject to division without
9 manifest prejudice to the rights of the parties and, if so,
10 report how the division may be made. The court may authorize
11 the employment of a surveyor to carry out or assist in the
12 division of the premises. The fees and expenses of the
13 commissioner and of the surveyor and the person making the sale
14 shall be taxed as costs in the proceedings. ~~When the court~~
15 ~~orders a partition of any premises to be made, it shall appoint~~
16 ~~3 commissioners, not connected with any of the parties, either~~
17 ~~by consanguinity or affinity, and entirely disinterested, to~~
18 ~~make partition of the premises, and such commissioners shall be~~
19 ~~allowed a reasonable sum for their services and expenses, to be~~
20 ~~fixed by the court, and taxed in the bill of costs.~~

21 ~~The Court may in its discretion appoint one commissioner~~
22 ~~who shall have all the rights and powers and be under the same~~
23 ~~obligations as set forth in Article XVII of this Act whenever 3~~
24 ~~commissioners are appointed.~~

25 (Source: P.A. 82-280.)

26 (735 ILCS 5/17-112) (from Ch. 110, par. 17-112)

27 Sec. 17-112. Homestead. If any party to the action is
28 entitled to an estate of homestead in the premises, or any part
29 thereof, and the homestead has not been set off, the homestead
30 may be set off by the court ~~commissioners~~; and if the court so
31 directs, the premises so allotted or set off may be partitioned
32 among the claimants, subject thereto.

33 (Source: P.A. 82-280.)

1 (735 ILCS 5/17-107 rep.)

2 (735 ILCS 5/17-108 rep.)

3 (735 ILCS 5/17-109 rep.) (from Ch. 110, par. 17-109)

4 (735 ILCS 5/17-110 rep.) (from Ch. 110, par. 17-110)

5 (735 ILCS 5/17-111 rep.) (from Ch. 110, par. 17-111)

6 (735 ILCS 5/17-116 rep.) (from Ch. 110, par. 17-116)

7 (735 ILCS 5/17-117 rep.) (from Ch. 110, par. 17-117)

8 Section 10. The Code of Civil Procedure is amended by
9 repealing Sections 17-107, 17-108, 17-109, 17-110, 17-111,
10 17-116, and 17-117.

11 (765 ILCS 525/Act rep.)

12 Section 15. The Oil and Gas Recovery Act is repealed.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.