

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 535/Act rep.)

12 Section 15. The Oil and Gas Lease Release Act is repealed.

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