

**60-1003. Partition.** (a) *Petition.* (1) When the object of the action is to effect a partition of personal or real property or an estate or interest created by an oil, gas or mineral lease or an oil or gas royalty, the petition must describe the property and the respective interests of the owners thereof, if known.

(2) If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

(3) Persons claiming or having a specific or general lien upon all or any portion of the property, may be made parties.

(4) An allegation of ownership of an interest implies an allegation of right to possession of the property, and it is not necessary to claim the remedy of ejectment in an action for partition.

(b) *Answer.* The answers of the defendants shall include allegations of the nature and extent of their respective interests. They may also deny the interests of any of the plaintiffs, or any of the defendants. Any claim of adverse possession shall be affirmatively pleaded and the burden of proving the same is on the defendant.

(c) *Procedure.* (1) *Order of partition.* The judge shall first determine and make an order specifying the interest of the respective parties and directing partition.

(2) *Commissioners.* Upon making an order of partition, the judge shall appoint three (3) commissioners to partition the property among the parties according to their respective interests, but if such partition cannot be made without manifest injury, or is for any reason impracticable, the commissioners shall appraise the value of the property, valuing each tract separately, if more than one, and report their conclusions to the court.

(3) *Exceptions to commissioner's report.* Any party may file exceptions to the commissioners' report and the judge may, after hearing with reasonable notice to all parties affected approve or disapprove the same, or make such modifications as justice and equity may require, including an order requiring specific portions of the property to be awarded to specific parties, or direct such further proceedings as the judge deems equitable, but if no exceptions are filed to the commissioners' report as to division in kind the judge shall so enter judgment in accordance with the report.

(4) *Election or sale.* Where the property is not subject to partition in kind, any one or more of the parties may elect within a time so fixed by the judge to take the property or any separate tract at the appraised value, but if none of the parties elect to so take the property, or two or more elect to so take, in opposition to each other, the judge shall order the sheriff to sell it in the manner provided for sale of property on execution. No sale shall be made at less than two-thirds of the valuation placed upon the property by the commissioners.

(5) *Costs and fees.* The court making partition shall tax the costs, attorney fees and expenses, including an allowance for preparation or bringing up to date of an abstract of title or title insurance to the real estate involved in the action, which may accrue in the action, and apportion the same among the parties according to their respective interests, and may award execution therefor, as in other cases.

(d) *General powers of judge.* The court shall have full power to make any order not inconsistent with the provisions of this article that may be necessary to make a just and equitable partition between the parties, and to secure their respective interests, or may refuse partition if the same would result in extraordinary hardship or oppression.

**History:** L. 1963, ch. 303, 60-1003; Jan. 1, 1964.