

AN ACT concerning property.

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

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

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

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

surface method of mining without first obtaining the consent of all of the owners of the surface to the mining and removal of coal by the surface method of mining. Ownership of an interest in minerals by a co-owner of an interest in the surface does not prevent partition of the surface. The 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.

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

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

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

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

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

Sec. 17-106. Appointment of commissioner and surveyor.  
~~Appointment of Commissioners.~~ The court in its discretion, sua sponte, or on the motion of any interested party, may appoint a disinterested commissioner who, subject to direction by the court, shall report to the court in writing under oath as to whether or not the premises are subject to division without manifest prejudice to the rights of the parties and, if so, report how the division may be made. The court may authorize the employment of a surveyor to carry out or assist in the division of the premises. The fees and expenses of the commissioner and of the surveyor and the person making the sale shall be taxed as costs in the proceedings. ~~When the court orders a partition of any premises to be made, it shall appoint 3 commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested, to make partition of the premises, and such commissioners shall be allowed a reasonable sum for their services and expenses, to be fixed by the court, and taxed in the bill of costs.~~

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

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

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

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

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

(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)

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

(765 ILCS 535/Act rep.)

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

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