

By: Representative Reynolds

To: Judiciary A

HOUSE BILL NO. 716

1 AN ACT TO AMEND SECTIONS 11-21-11 AND 11-21-27, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT SALE OF PROPERTY WHICH CANNOT BE
3 DIVIDED EQUALLY AMONG COTENANTS MAY BE SOLD BY A BROKER IN A
4 COMMERCIALY REASONABLE MANNER; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 11-21-11, Mississippi Code of 1972, is
7 amended as follows:

8 11-21-11. (1) If, upon hearing, the court be of the opinion
9 that a sale of the lands, or any part thereof, will better promote
10 the interest of all parties than a partition in kind, or if the
11 court be satisfied that an equal division cannot be made, it shall
12 order a sale of the lands, or such part thereof as may be deemed
13 proper, and a division of the proceeds among the cotenants
14 according to their respective interests. The court may appoint
15 a * * * broker to make the sale in accordance with this section,
16 and may make all proper orders to protect the rights of the
17 parties interested. The court may order the sale of a part of the
18 land and the partition in kind of the residue.



19 (2) Before the court shall order a sale of the lands, the
20 court may cause an appraisal to be made of the property, the
21 expense of which shall be taxed and collected as costs in the
22 proceedings. If the court causes an appraisal of the property to
23 be made, then, subsequent to the receipt and filing of the
24 appraisal with the court, the court shall hold in abeyance its
25 order for sale of the land for a period of thirty (30) days in
26 order to allow the parties the opportunity to reach an agreement
27 as to a partition in kind or sale of the lands.

28 (3) (a) If the court orders a sale of property under this
29 section, the sale must be an open-market sale conducted by a real
30 estate broker licensed in this state, unless the court finds that
31 a public sale by sealed bids or an auction would be more
32 economically advantageous and in the best interest of the
33 cotenants as a group.

34 (b) If the court orders an open-market sale and
35 parties, not later than ten (10) days after the entry of the
36 order, agree on a real estate broker licensed in this state to
37 offer the property sale, the court shall appoint the broker and
38 establish a reasonable commission. If the parties do not agree on
39 a broker, the court shall appoint a disinterested real estate
40 broker licensed in this state to offer the property for sale.

41 (c) The broker shall offer the property for sale in a
42 commercially reasonable manner at a price no lower than the



43 determination of value and on terms and conditions established by
44 the court.

45 (d) If the broker does not obtain within a reasonable
46 time an offer to purchase the property for at least the
47 determination of value, the court, after hearing, may:

48 (i) Approve the highest outstanding offer, if any;

49 (ii) Redetermine the value of the property and
50 order that the property continue to be offered for an additional
51 time; or

52 (iii) Order that the property be sold by sealed
53 bids or at an auction.

54 **SECTION 2.** Section 11-21-27, Mississippi Code of 1972, is
55 amended as follows:

56 11-21-27. (1) If, after a judgment for partition and the
57 appointment of masters, it shall appear from the report of the
58 masters, or on exceptions to their report, that a just and equal
59 division of the land cannot be made, or that a sale will better
60 promote the interest of all the cotenants, the court shall order a
61 sale of the land, or such part thereof as may be deemed proper,
62 and a division of the proceeds among those interested, as provided
63 for.

64 (2) Before the court shall order a sale of the lands, the
65 court may cause an appraisal to be made of the property, the
66 expense of which shall be taxed and collected as costs in the
67 proceedings. If the court causes an appraisal of the property to



68 be made, then, subsequent to the receipt and filing of the
69 appraisal with the court, the court shall hold in abeyance its
70 order for sale of the land for a period of thirty (30) days in
71 order to allow the parties the opportunity to reach an agreement
72 as to a partition in kind or sale of the lands.

73 (3) (a) If the court orders a sale of property under this
74 section, the sale must be an open-market sale conducted by a real
75 estate broker licensed in this state, unless the court finds that
76 a public sale by sealed bids or an auction would be more
77 economically advantageous and in the best interest of the
78 cotenants as a group.

79 (b) If the court orders an open-market sale and the
80 parties, not later than ten (10) days after the entry of the
81 order, agree on a real estate broker licensed in this state to
82 offer the property sale, the court shall appoint the broker and
83 establish a reasonable commission. If the parties do not agree on
84 a broker, the court shall appoint a disinterested real estate
85 broker licensed in this state to offer the property for sale.

86 (c) The broker shall offer the property for sale in a
87 commercially reasonable manner at a price no lower than the
88 determination of value and on terms and conditions established by
89 the court.

90 (d) If the broker does not obtain within a reasonable
91 time an offer to purchase the property for at least the
92 determination of value, the court, after hearing, may:



93 (i) Approve the highest outstanding offer, if any;

94 (ii) Redetermine the value of the property and
95 order that the property continue to be offered for an additional
96 time; or

97 (iii) Order that the property be sold by sealed
98 bids or at an auction.

99 **SECTION 3.** This act shall take effect and be in force from
100 and after July 1, 2016.

