

By: Representative Reynolds

To: Judiciary A

HOUSE BILL NO. 704

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 the  
35 parties agree, not later than ten (10) days after the entry of the  
36 order, on a real estate broker licensed in this state to offer the  
37 property for 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 an offer to purchase  
46 the property for at least the determination of value within a  
47 reasonable time, 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 agree, not later than ten (10) days after the entry of the  
81 order, on a real estate broker licensed in this state to offer the  
82 property for 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, 2019.

