

CHAPTER 558

PARTITION OF REAL ESTATE

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NOTE: Chapter 558 is excepted from the Rules of Civil Procedure.

558.01 PARTITION, SALE; WHO MAY BRING ACTION.

When two or more persons are interested, as joint tenants or as tenants in common, in real property in which one or more of them have an estate of inheritance or for life or for years, an action may be brought by one or more of such persons against the others for a partition thereof according to the respective rights and interests of the parties interested therein, or for a sale of such property, or a part thereof, if it appears that a partition cannot be had without great prejudice to the owners.

History: *RL s 4392 (9524)*

558.02 SUMMONS; SERVICE.

The summons shall be addressed by name to all the owners and lienholders who are known, and may also be addressed "to all other persons unknown having or claiming an interest in the property described in the complaint herein." Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of the complaint, in which case the plaintiff shall, before the commencement of the action, file with the county recorder a notice of the pendency of the action.

History: *RL s 4393; 1967 c 29 s 1; 1976 c 181 s 2 (9525)*

558.03 COMPLAINT.

The complaint shall particularly set forth the interest of all persons in the property, whether by way of ownership or lien, so far as known to the plaintiff; and if any such person, or his share or interest, is unknown to the plaintiff, or is uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or there is a contingent remainder, so that such person cannot be named, that fact shall be set forth. The complaint shall also state the cash value of the property, and shall be verified.

History: *RL s 4394 (9526)*

558.04 JUDGMENT FOR PARTITION; REFEREES.

Except as provided in section 558.05, the title to the property and the rights of the parties shall be established by evidence or by the written stipulation of the

parties to be affected thereby; and thereupon, in a proper case, the court shall render judgment that partition be made accordingly, and shall appoint three disinterested and judicious citizens of the county as referees to make partition and set off the shares of the several persons interested as determined by the judgment.

History: *RL s 4395 (9527)*

558.05 DISPUTE BETWEEN DEFENDANTS NO DEFENSE.

If the title of the plaintiff to a certain undivided share of the property is proved or admitted, it shall not be a defense that there is a dispute or litigation undetermined between some of the defendants as to the right or title of such defendants in or to any undivided shares of the property claimed by them; but in such case the court shall render judgment that partition be made, or that the property be sold as in other cases, and shall cause the portion of the property or of the proceeds thereof pertaining to such undivided shares in dispute to be allotted to the defendants claiming the same, without determining their respective rights thereto, and, in case of sale, may order the portion of the proceeds pertaining to such shares to be paid into court to abide the result of any existing or subsequent litigation between such defendants.

History: *RL s 4396 (9528)*

558.06 DUTY OF REFEREES; REPORT; EXPENSES.

When partition is made, the referees shall divide the property, and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to their respective rights, designating the several portions by proper landmarks, and may employ a surveyor, with necessary assistants, to aid them therein. They shall make a report of their proceedings, specifying the manner of executing the trust, and describing the property and the share allotted to each party, with a particular description thereof. The expenses and fees of the referees, including those of a surveyor and his assistants, when employed, shall be paid by the plaintiff, and may be allowed as part of the charges.

History: *RL s 4397 (9529)*

558.07 CONFIRMATION OF REPORT; FINAL JUDGMENT.

The court may confirm or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, final judgment shall be rendered that such partition be effectual forever, and such judgment shall be binding:

(1) On all the parties named therein, and their legal representatives, who had at the time any interest in the property divided, as owners in fee or as tenants for years, or as entitled to the remainder, reversion, or inheritance thereof, after the determination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest therein, or who have an interest in an undivided share thereof as tenants for years or for life;

(2) On all persons interested in the property who may be unknown, and to whom notice has been given by publication of the summons;

(3) On all persons claiming from such parties or persons, or either of them.

History: *RL s 4398 (9530)*

558.08 PERSONS NOT AFFECTED.

Such judgment shall not affect tenants or persons having claims as tenants for life to the whole of the property which is subject of the partition; nor shall such judgment preclude any persons except such as are specified in section 558.07 from claiming title to such property, or from controverting the title of the parties between whom partition is made.

History: *RL s 4399 (9531)*

558.09 LIENS, HOW AFFECTED.

When there is a lien on an undivided interest or estate of any of the parties, if partition is made such lien is thenceforth a charge only on the share allotted to such party; but such share shall first be charged with its just proportion of the costs and charges of the partition, in preference to such lien.

History: *RL s 4400 (9532)*

558.10 COSTS APPORTIONED.

The costs, charges, and disbursements of partition shall be paid by the parties respectively entitled to share in the land, and the amounts to be paid by each shall be determined by the court, and specified in the final judgment. Such judgment may be docketed, and payment of such amounts may be enforced by execution against the property of the respective judgment debtors as in the case of other judgments for money.

History: *RL s 4401 (9533)*

558.11 COMPENSATION BECAUSE OF INEQUALITY.

When it appears that partition cannot be made equal between the parties without prejudice to the rights or interests of some, the court may adjudge compensation to be made by one to another for equality of partition; but such compensation shall not be required to be made by an unknown owner, nor by an infant, unless it appear that the infant has personal property sufficient therefor, and that his interest will be promoted thereby.

History: *RL s 4402 (9534)*

558.12 PROPERTY NOT CAPABLE OF DIVISION MAY BE SET OFF; OCCUPANCY ASSIGNED.

When the premises consist of a mill or other tenement which cannot be divided without damage to the owners, or when any specified part is of greater value than either party's share, and cannot be divided without damage to the owners, the whole premises or the part so incapable of division may be set off to any party who will accept it, he paying to one or more of the others such sums of money as the referees award to make the partition just and equal; or the referees may assign the exclusive occupancy and enjoyment of the whole or of such part to each of the parties alternately for specified times, in proportion to their respective interests.

History: *RL s 4403 (9535)*

558.13 OCCUPANT LIABLE TO COTENANTS; TRESPASS.

When the whole or a specific part of the premises is thus assigned, the person entitled for the time being to the exclusive occupancy shall be liable to his cotenants for any injury thereto occasioned by his misconduct, as a tenant for years under a common lease without express covenants would be liable to his landlord; and the other tenants in common may have their remedy therefor against him by action, jointly or severally, at their election. While the estate is in the exclusive occupancy of such cotenant, he shall have the same remedy against one who trespasses upon or otherwise injures the premises as if he held the same under a lease for the term for which they were so assigned to him, and he and all the other tenants in common may recover such other and further damages as they have sustained by the same trespass or injury in like manner as if the premises had been leased by them. Joint damages recovered by such tenants in common shall be apportioned and divided between them according to their respective rights by the court in which the judgment is recovered.

History: *RL s 4404 (9536)*

558.14 SALE MAY BE ORDERED.

Except as provided in section 558.15, if it is alleged in the complaint and established by evidence that the property, or any part of it, is so situated that partition cannot be had without great prejudice to the owners, the court may order a sale of the property or of such part, and for that purpose may appoint one or more referees; or when, without such allegation and proof, referees are appointed to make partition, who report that the property, or any distinct part of it, is so situated that partition cannot be had without great prejudice to the owners, and the court is satisfied that such report is correct, it may order the referees to sell the property or such part.

History: *RL s 4405 (9537)*

558.15 LIENS; NEW PARTIES; NO SALE, WHEN.

Proof shall be made of the existence, amount, and priority of any liens on the property of which partition is sought in such manner and upon such notice to those interested as the court shall direct. When any person having a lien has not been made a party, the court may make an order requiring him to appear and become a party defendant, and no such person can be affected by a sale unless he has been made a party. If there are liens on the property amounting to more than its value as alleged in the complaint, or if it appears probable after examination that the property will not sell for a sum in cash equal to the amount of such liens, with costs and expenses, no sale shall be ordered; but, if such liens do not amount to the value of the property as admitted or proved, the court may order a sale, and in such case the sale shall not be delayed by the proceedings to ascertain the priority of the liens.

History: *RL s 4406 (9538)*

558.16 PROCEEDS, HOW APPLIED.

The proceeds of the sale of the property shall be applied under the direction of the court as follows:

- (1) To pay its just proportion of the general costs of the action;
- (2) To pay the costs of the reference;
- (3) To satisfy and cancel of record the several liens, if any, in their order of priority, by payment of the sums due and to become due; the amount remaining due to be verified by affidavit at the time of payment;
- (4) The residue among the owners of the property sold, according to their respective shares.

History: *RL s 4407 (9539)*

558.17 SALE OF REAL PROPERTY UNDER ACTION FOR PARTITION; NOTICE.

The sale may be by public auction to the highest bidder for cash, upon published notice in the manner required for the sale of real property on execution. The notice shall state the terms of the sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or specific lien, the notice shall so state. The terms of sale shall be made known at the time thereof, and, if the premises consist of distinct farms or lots, they shall be sold separately. The court may, if it be for the best interests of the owners of the property, order such property sold by private sale. If a private sale be ordered the real estate shall be appraised by two or more disinterested persons under order of the court, which appraisal shall be filed before the confirmation of the sale by the court. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. The court may

order sale of real estate for cash, part cash and a purchase money mortgage of not more than 50 percent of the purchase price, or on contract for deed.

History: *RL s 4408; 1937 c 190 s 1 (9540)*

558.18 PERSONS PROHIBITED FROM PURCHASING.

Neither the referees, nor any person for the benefit of either of them, shall be interested, directly or indirectly, in any purchase of the premises sold; nor shall a guardian of an infant party be interested in any such purchase, except for the benefit of the infant. All sales contrary to this section are void.

History: *RL s 4409 (9541)*

558.19 PURCHASE BY PART OWNER.

When a party entitled to a share in the property, or an encumbrancer entitled to have his lien paid out of the proceeds of the same, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him. They shall also pay over to the plaintiff or his attorney, and take his receipt for, the costs and charges of the action.

History: *RL s 4410 (9542)*

558.20 REPORT OF SALE.

The referees shall report the sale to the court, describing the different parcels sold to each purchaser, and specifying the name of the purchaser, the price paid or secured, and the terms and conditions of the sale, which report shall be filed with the clerk.

History: *RL s 4411 (9543)*

558.21 FINAL JUDGMENT ON CONFIRMING REPORT.

If the sale is confirmed by the court, final judgment shall be entered directing the referees to execute conveyances pursuant thereto, and also directing the application of the proceeds of the sale.

History: *RL s 4412 (9544)*

558.215 ORDERS, INTERLOCUTORY JUDGMENTS; APPEALS TO SUPREME COURT.

Any party to any partition proceedings may appeal from any order or interlocutory judgment made and entered pursuant to sections 558.04, 558.07, 558.14, or 558.21, to the supreme court within 30 days after the making and filing of any such order or interlocutory judgment. Any appeal taken pursuant to the provisions hereof shall be governed by the rules and laws applicable to appeals in civil cases.

All matters determined by any such order or interlocutory judgment shall be conclusive and binding upon all parties to such proceedings and shall never thereafter be subject to review by the court unless appealed from as provided for herein.

History: *1941 c 448 s 1,2*

558.22 CLAIMS TO PROCEEDS, HOW DETERMINED.

When the proceeds of sale of any shares belonging to parties to the action who are known are paid into court the action may be continued as between them for the determination of their respective claims thereto. Further testimony may be taken in court or by a referee, at the discretion of the court, which may, if

necessary, require the parties to present the facts in controversy by pleadings, as in an original action. The proceedings authorized by this section shall not delay or affect any party whose rights are not involved therein.

History: *RL s 4413 (9545)*

558.23 RECORD AND EFFECT OF CONVEYANCES.

The conveyances executed by the referees shall be recorded and shall bar all parties to the action, including all persons having liens, specific or general, against the property, and all persons unknown, interested in the property, to whom notice has been given by publication of the summons, and all persons claiming under them or any of them.

History: *RL s 4414 (9546)*

558.24 SALE OF PART; LIFE ESTATE OR FOR YEARS.

When a part of the property only is ordered to be sold, if there is an estate for life or for years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold.

History: *RL s 4415 (9547)*

558.25 ESTATE FOR LIFE OR YEARS, MAY BE SET OFF OR SOLD.

When the estate of a tenant for life or for years in the whole or any part of the property has been proved or admitted to exist at the time of the order for sale, and the person entitled thereto has been made a party, such estate may first be set off out of any part of the property, and a sale made of such part subject to such estate; but if, in the judgment of the court, a due regard to the interest of all parties requires that such estate be sold, the sale may be so ordered. If a sale of the property including such estate is ordered, such estate passes thereby, and the purchaser, his heirs and assigns, shall hold the property discharged from all claim by virtue thereof, whether the same relate to the undivided share of a joint tenant or tenant in common, or to the whole or any part of the property sold.

History: *RL s 4416 (9548)*

558.26 GROSS SUM IN LIEU OF ESTATE; PROCEEDS OF SALE TO BE INVESTED, WHEN; UNKNOWN PARTIES.

Such person whose estate has been so sold shall be entitled to receive such sum in gross as may be deemed, upon principles of law applicable to annuities, a reasonable satisfaction therefor. His written consent to accept such sum in lieu of such estate, executed and acknowledged in the same manner as a conveyance, must be filed at or before the report of sale. If consent be not so given, the court shall direct that the whole proceeds of the sale of the property, or of the individual share thereof in which such estate may be, shall be deposited in court, and invested for the benefit of the person entitled to such estate during the period thereof; and, if any person entitled to any such estate is unknown, the court shall provide for the protection of his rights in the same manner, so far as may be, as if he were known and had appeared. In all cases the proper proportion of expenses of the proceedings shall be deducted from the proceeds of sale.

History: *RL s 4417 (9549)*

558.27 FUTURE ESTATES.

When it appears that any person has a vested or contingent future right or estate in any of the property divided or sold, the court shall ascertain and settle the proportionate value thereof according to the principles of law applicable to

annuities and survivorships, and direct such proportion of the proceeds of sale to be invested, secured, or paid over in such manner as to protect the rights and interests of the parties.

History: *RL s 4418 (9550)*

558.28 RELEASE OF CONTINGENT INTEREST.

A married person may release to a spouse a contingent interest in real estate by a writing executed and acknowledged in the same manner as a conveyance, and, upon the filing of the instrument with the clerk, the whole proceeds arising from the sale shall be paid to the spouse to whom the interest was released. The release shall bar the releaser's contingent interest in the real estate.

History: *RL s 4419; 1981 c 31 s 17 (9551)*

558.29 INVESTMENT OF PROCEEDS.

When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no representative within it, or when there are proceeds arising from the sale of property including the prior estate of a tenant for life or for years, which are paid into court or deposited with the clerk, the same shall be invested in interest-bearing securities for the benefit of the persons entitled thereto. Except as in this chapter otherwise provided, such investment shall be made in the name of the clerk and his successors in office, who shall hold the same for the use and benefit of the persons interested, subject to the order of the court. The clerk shall receive the interest and principal as it becomes due, apply and invest the same as the court may direct, file in his office the securities taken, and keep an account of such investments and of the moneys received thereon and his disposition thereof, in a book kept for that purpose, which shall be open to inspection by all persons.

History: *RL s 4420 (9552)*

558.30 SHARE OF INFANT, HOW PAID.

When the share of an infant is sold, his share of the proceeds may be paid by the referees making the sale to his general guardian, or to the special guardian appointed for him in the action, if the guardian has given the security required by law.

History: *RL s 4421 (9553)*

558.31 SHARE OF INCAPABLE PERSON.

When the share of an insane person, or other person adjudged incapable of conducting his own affairs, is sold, his share of the proceeds may be paid by the referees making the sale to the guardian who is entitled to the custody and management of his estate, if the guardian has executed an undertaking, approved by a judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled thereto, or his representatives.

History: *RL s 4422 (9554)*

558.32 PROCEEDINGS WHEN STATE A PARTY.

The state may be made a party to an action for the sale or partition of real property, in which case the summons and complaint shall be served upon the attorney general, who shall appear on behalf of the state.

History: *RL s 4423 (9555)*