

Appendix D

TEXAS RULES OF CIVIL PROCEDURE

SECTION 4. PARTITION OF REAL ESTATE

RULE 756. PETITION

The plaintiff's petition shall state:

- (a) The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.
- (b) The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.
- (c) The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

RULE 757. CITATION AND SERVICE

Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the manner and for the time provided for the service of citations in other cases.

RULE 758. WHERE DEFENDANT IS UNKNOWN OR RESIDENCE IS UNKNOWN

If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in plaintiff's petition in said suit is owned by some person unknown to affiant, or that the place of residence of any known party owning an interest in land sought to be partitioned is unknown to affiant, the Clerk of the Court shall issue citation for publication, conforming to the requirements of Rules 114 and 115, and served in accordance with the directions of Rule 116. In case of unknown residence or party, the affidavit shall include a statement that after due diligence plaintiff and the affiant have been unable to ascertain the name or locate the residence of such

party, as the case may be, and in such case it shall be the duty of the court trying the action to inquire into the sufficiency of the diligence so stated before granting any judgment.

RULE 759. JUDGMENT WHERE DEFENDANT CITED BY PUBLICATION

When the defendant has been duly cited by publication in accordance with the preceding rule, and no appearance is entered within the time prescribed for pleadings, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.

RULE 760. COURT SHALL DETERMINE, WHAT

Upon the hearing of the cause, the court shall determine the share or interest of each of the joint owners or claimants in the real estate sought to be divided, and all questions of law or equity affecting the title to such land which may arise.

RULE 761. APPOINTMENT OF COMMISSIONERS

The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole, or any part of such property is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of such parties entitled thereto, specify in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act.

RULE 762. WRIT OF PARTITION

The clerk shall issue a writ a partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition.

RULE 763. SERVICE OF WRIT OF PARTITION

The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court.

RULE 764. MAY APPOINT SURVEYOR

The court may, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him by reading the same to him.

RULE 765. RETURN OF WRIT

A writ of partition, unless otherwise directed by the court, shall be made returnable twenty days from date of service on the commissioner last served; and the officer serving it shall endorse thereon the time and manner of such service.

RULE 766. SHALL PROCEED TO PARTITION

The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of law and these rules.

RULE 767. MAY CAUSE SURVEY

If the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.

RULE 768. SHALL DIVIDE REAL ESTATE

The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. The commissioners shall then proceed by lot to set apart to each of the parties entitled one of said shares, determined by the decrees of the court.

RULE 769. REPORT OF COMMISSIONERS

When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

- (a) The property divided, describing the same.
- (b) The several tracts or parcels into which the same was divided by them, describing each particularly.
- (c) The number of shares and the land which constitutes each share, and the estimated value of each share.
- (d) The allotment of each share.
- (e) The report shall be accompanied by such field notes and maps as may be necessary to make the same intelligible.

The clerk shall immediately mail written notice of the filing of the report to all parties.

RULE 770. PROPERTY INCAPABLE OF DIVISION

Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, cannot be made, it shall order a sale of so much as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution or by private or public sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests.

RULE 771. OBJECTIONS TO REPORT

Either party to the suit may file objections to any report of the commissioners in partition within thirty days of the date the report is filed, and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the Court, and the same proceedings had as in the first instance.