

Uniform Partition of Heirs Property Act

This uniform law has made the tenancy in common, a common ownership structure under which two or more cotenants own undivided interests in a parcel of property, the default ownership structure for two or more family members who inherit real property. In addition, the law presumes that two or more people who acquire undivided interests in real property by conveyance or devise take ownership to the property as tenants in common and not as joint tenants unless the intention to create a joint tenancy is very clear. However, certain key features of tenancy-in-common ownership can create serious problems for those seeking to maintain ownership of the property for themselves and their relatives. For example, any cotenant may sell his or her interest or convey it by gift during his or her lifetime without the consent of his or her cotenants, making it easy for non-family members – including real estate speculators – to acquire interests in family real estate. Or at a cotenant’s death, his or her interest in the property may be transferred by will or pursuant to intestacy laws. Once someone acquires even a small interest in tenancy-in-common property, this new cotenant can initiate a partition action and request the court to order a forced sale of the entire property, called a partition by sale, even if all of the other cotenants do not consent and wish to retain ownership of the property.

Although a surprising number of relatively wealthy families face problems with tenancy-in-common ownership, low to moderate-income landowners experience particularly acute problems with such ownership, including problems with partition actions. Scholars and practitioners alike recognize that within this demographic, families own property at a high rate under the default rules of a tenancy in common. In many circumstances this is due to the fact that low to middle-income property owners transfer their property by intestate succession at a higher rate than by will. Further, these property owners are typically much less likely than wealthier families to have entered into a tenancy-in-common agreement or another private agreement governing the partition of the property. As a result of this pattern, within many communities across the country with a significant number of property owners of modest means, family property is owned under a tenancy-in-common ownership structure, and commonly referred to as “heirs property.” The number of cotenants often multiplies significantly under heirs property ownership, further destabilizing individual ownership interests given that any one of the cotenants can ask a court to order a partition by sale. Many who own heirs property have little to no understanding of the legal rules governing partition. Payment of property taxes, productive land use, residence, or a near consensus on maintaining ownership within the family will not secure a family’s ownership, and their first exposure to the often counterintuitive rules governing partition often only occurs after an action has been filed and critical stages in the litigation have passed.

The Uniform Law Commission promulgated the Uniform Partition of Heirs Property Act (UPHPA) in 2010 to address issues specific to heirs property in partition actions. The Act does not limit or prohibit the filing of a partition action, and does not replace in any comprehensive way existing partition laws with respect to non-heirs property or property that has a binding agreement among cotenants on how to handle partition. It provides narrowly focused statutory procedures and a hierarchy of remedies for use in partition actions involving heirs property, and a systematic approach that will help protect holders of covered family-owned, ancestral property from real estate speculation and efforts to strip them of their real property and real property wealth without adequate recourse. Key highlights of the Act include:

- “Heirs property” is defined as real property that is held under a tenancy in common in which there is no binding agreement among the cotenants governing partition of the property. Additionally, one or more of the cotenants must have acquired title from a relative, and either: 20% or more of the interests are held by cotenants who are relatives; 20% or more of the interests are held

by an individual who acquired title from a relative; or 20% or more of the cotenants themselves are relatives.

- When an action for partition of real property is filed, the court must determine whether the property is heirs property – the Act will trump existing provisions in conflict, for heirs property.

- Any court-appointed commissioner may not have any interest or participation in the action.

- Under the Act, the court appoints a disinterested real estate appraiser to assess the fair market value of the property unless all the cotenants agree to a different valuation method or the court determines that the cost of the appraisal will outweigh its evidentiary value.

- After the value of the property is determined, the Act provides all of the cotenants who did not request partition by sale with a right to buy out all of the interests of those who have done so, at a price equal to the court-determined value of the property multiplied by the fractional interest of the cotenant that is bought out. The Act provides for procedures in the event multiple cotenants wish to buy out those petitioning for sale. It also provides for co-tenants absent from the action in a second buyout, which, in many circumstances, can help to make partition in kind of the property more feasible and to consolidate ownership of the property to facilitate its long term management.

- If all of the interests of those seeking partition by sale are not purchased by other cotenants, or if there is a cotenant remaining who seeks partition in kind after the court has concluded the operation of the Act’s buyout provisions, then the court shall proceed with a partition in kind unless great or manifest prejudice to the cotenants as a group would result. The Act provides a list of economic and noneconomic factors which a court shall consider in determining whether great or manifest prejudice would occur if partition in kind were ordered.

- If the court does not order partition in kind, it shall order partition by sale unless none of the cotenants have requested partition by sale, in which case the court shall dismiss the action.

- A partition by sale, if ordered, must be an open-market sale unless a sale by sealed bid or an auction would be economically more advantageous and of greater benefit to the cotenants as a group. The parties may agree on a broker or a licensed one may be appointed by the court. The broker shall offer the property for sale in a commercially reasonable manner and shall list the property for sale at the court-determined value. If an offer at or above the court-determined value is received within a reasonable time, the broker may complete the sale according to state law after complying with the Act’s reporting requirements. If no offer at or above the court-determined value is received within a reasonable time, the Act provides procedures and alternatives to effectuate a fair sale with the goal of maximizing value to the extent possible.

For questions about the Uniform Partition of Heirs Property Act, please contact Kieran Marion or Katie Robinson at 312-450-6600.

Submitted as:

Nevada

[AB 244 \(Enrolled Version\)](#)

Status: Enacted into law in 2011.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Uniform Partition of Heirs Property
2 Act.”

3
4 Section 2. [*Definitions.*] As used in this Act:

5 (1) "Ascendant" means an individual who precedes another individual in lineage, in the
6 direct line of ascent from the other individual.

7 (2) "Collateral" means an individual who is related to another individual under the law of
8 intestate succession of this state but who is not the other individual's ascendant or descendant.

9 (3) "Descendant" means an individual who follows another individual in lineage, in the
10 direct line of descent from the other individual.

11 (4) "Determination of value" means an order of a court determining the fair market value of
12 heirs property under section 6 or 10 of this Act or adopting the valuation of the property agreed to by
13 all cotenants.

14 (5) "Heirs property" means real property held in tenancy in common which satisfies all the
15 following requirements as of the filing of a partition action:

16 A. there is no agreement in a record binding all the cotenants which governs the
17 partition of the property.

18 B. one or more of the cotenants acquired title from a relative, whether living or
19 deceased.

20 C. any of the following applies:

21 (i) 20 percent or more of the interests are held by cotenants who are relatives;

22 (ii) 20 percent or more of the interests are held by an individual who acquired
23 title from a relative, whether living or deceased; or

24 (iii) 20 percent or more of the cotenants are relatives.

25 (6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by
26 auction, sealed bids or open-market sale conducted under Section 10.

27 (7) "Partition in kind" means the division of heirs property into physically distinct and
28 separately titled parcels.

29 (8) "Record" means information that is inscribed on a tangible medium or that is stored in an
30 electronic or other medium and is retrievable in perceivable form.

31 (9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise
32 related to another individual by blood, marriage, adoption, or law of this state other than this Act.

33
34 Section 3. [*Applicability; Relation to Other Law.*]

35 (a) This Act applies to partition actions filed on or after [the effective date of this Act].

36 (b) In an action to partition real property under [insert citation], the court shall determine
37 whether the property is heirs property. If the court determines that the property is heirs property, the
38 property must be partitioned under this Act, unless all the cotenants agree otherwise in a record.

39 (c) This Act supplements [insert citation] and, if an action is governed by this Act, replaces
40 provisions of [insert citation(s)] that are inconsistent with Act.

41
42 Section 4. [*Service; Notice by Posting.*]

43 (a) This Act does not limit or affect the method by which service of a [complaint] in a
44 partition action may be made.

45 (b) If the plaintiff in a partition action seeks [an order of notice] by publication and the court
46 determines that the property may be heirs property, the plaintiff, not later than [10] days after the
47 court's determination, shall post, [and maintain while the action is pending], a conspicuous sign on
48 the property that is the subject of the action. The sign must state that the action has commenced and
49 identify the name and address of the court and the common designation by which the property is
50 known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the
51 known defendants.

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Section 5. [*Commissioners.*] If the court appoints [commissioner] pursuant to [insert citation], each [commissioner], in addition to the requirements and disqualifications applicable to [commissioners] in [insert citation], must be disinterested, impartial, and neither a party to nor a participant in the action.

Section 6. [*Determination of Value.*]

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property which is the subject of the partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

- (1) the appraised fair market value of the property;
- (2) that the appraisal is available at the clerk of the court's office; and
- (3) that a party may object to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not earlier than 30 days after a copy of the notice of appraisal is sent to each party under subsection (e), whether or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value that is offered by a party.

(g) After the hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Section 7. [*Cotenant Buyout.*]

(a) If any cotenant requested partition by sale, after the determination of value under Section 6 of this Act, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy the interest of any cotenant that requested partition by sale.

(b) Not later than 45 days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section 6 multiplied by that cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), the following rules apply:

- (1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.
- (2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing

101 cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided
102 by the total existing fractional ownership of all cotenants electing to buy and send notice to all the
103 parties of that fact and of the price to be paid by each electing cotenant.

104 (3) If no cotenant elects to buy all the interests of the cotenants that requested
105 partition by sale, the court shall send notice to all the parties of that fact and resolve the partition
106 action under Section 8 (a) and (b).

107 (e) If the court sends notice to the parties under either subsection (d) (1) or (2), the court shall
108 set a date, not earlier than 60 days after the date the notice was sent, by which electing cotenants
109 must pay their apportioned price into the court. After this date, the following rules apply:

110 (1) If all electing cotenants timely pay their apportioned price, the court shall issue an
111 order reallocating all the interests of the cotenants and disburse the amounts held by the court to the
112 persons entitled to them.

113 (2) If no electing cotenant timely pays its apportioned price, the court shall resolve
114 the partition action under section 8 (a) and (b) as if the interests of the cotenants that requested
115 partition by sale were not purchased.

116 (3) If one or more but not all the electing cotenants fail to timely pay their
117 apportioned price, the court [, on motion,] shall give notice to the electing cotenants that paid their
118 apportioned price of the interest remaining and the price for all that interest.

119 (f) Not later than 20 days after the court gives the notice pursuant to subsection (e) (3), any
120 cotenant that paid may elect to purchase all the remaining interest by paying the entire price to the
121 court. After the 20-day period, the following rules apply:

122 (1) If only one cotenant pays the entire price for the remaining interest, the court shall
123 issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an
124 order reallocating all the interests of all the cotenants and disburse the amounts held by the court to
125 the persons entitled to them.

126 (2) If no cotenant pays the entire price for the remaining interest, the court shall
127 resolve the partition action under section 8 (a) and (b) as if the interests of the cotenants that
128 requested partition by sale were not purchased.

129 (3) If more than one cotenant pays the entire price for the remaining interest, the court
130 shall reapportion the remaining interest among those paying cotenants, based on each paying
131 cotenant's original fractional ownership of the entire parcel divided by the total original fractional
132 ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue
133 promptly an order reallocating all the cotenants' interests, disburse the amounts held by the court to
134 the persons entitled to them, and promptly refund any excess payment held by the court.

135 (g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a),
136 any cotenant entitled to buy an interest under this section may request the court to authorize the sale
137 as part of the pending action of the interests of cotenants named as defendants and served with the
138 complaint but that did not appear in the action.

139 (h) If the court receives a timely request under subsection (g), the court, after hearing, may
140 deny the request or authorize the requested additional sale on such terms as the court determines are
141 fair and reasonable, subject to the following limitations:

142 (1) a sale authorized under this subsection may occur only after the purchase prices
143 for all interests subject to sale under subsections (a) through (f) have been paid into the court and
144 those interests have been reallocated among the cotenants as provided in those subsections; and

145 (2) the purchase price for the interest of a nonappearing cotenant is based on the
146 court's determination of value under Section 6.

147
148 Section 8. [*Partition Alternatives.*]

149 (a) If all the interests of all cotenants that requested partition by sale are not purchased by
150 other cotenants pursuant to Section 7, or if after conclusion of the buyout under Section 7, a cotenant
151 remains that has requested partition in kind, the court shall order partition in kind unless the court,
152 after consideration of the factors listed in Section 9, finds that partition in kind will result in great
153 prejudice to the cotenants as a group. In considering whether to order partition in kind, the court
154 shall approve a request by two or more parties to have their individual interests aggregated.

155 (b) If the court does not order partition in kind under subsection (a), the court shall order
156 partition by sale pursuant to section 10 or, if no cotenant requested partition by sale, the court shall
157 dismiss the action.

158 (c) If the court orders partition in kind pursuant to subsection (a), the court may require that
159 one or more cotenants pay one or more other cotenants amounts so that the payments, taken together
160 with the value of the in-kind distributions to the cotenants, will make the partition in kind just and
161 proportionate in value to the fractional interests held.

162 (d) If the court orders partition in kind, the court shall allocate to the cotenants that are
163 unknown, unlocatable or are the subject of a default [entry] [judgment], if their interests were not
164 bought out pursuant to Section 7, a part of the property representing the combined interests of these
165 cotenants as determined by the court [and this part of the property shall remain undivided].

166
167 Section 9. [*Considerations for Partition in Kind.*]

168 (a) In determining under Section 8 (a) whether partition in kind would result in great
169 prejudice to the cotenants as a group, the court shall consider the following:

170 (1) whether the heirs property practicably may be divided among the cotenants;

171 (2) whether partition in kind would apportion the property in such a way that the
172 aggregate fair market value of the parcels resulting from the division would be materially less than
173 the value of the property if it were sold as a whole, taking into account the condition under which the
174 court-ordered sale likely would occur;

175 (3) evidence of the collective duration of ownership or possession of the property by a
176 cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are
177 or were relatives of that cotenant or each other;

178 (4) a cotenant's sentimental attachment to the property, including, without limitation,
179 any attachment arising because the property has ancestral or other unique or special value to the
180 cotenant;

181 (5) the lawful use being made of the property by a cotenant and the degree to which
182 the cotenant would be harmed if the cotenant could not continue the same use of the property;

183 (6) the degree to which the cotenants have contributed their pro rata share of the
184 property taxes, insurance and other expenses associated with maintaining ownership of the property
185 or have contributed to the physical improvement, maintenance or upkeep of the property; and

186 (7) any other relevant factor.

187 (b) The court may not consider any one factor in subsection (a) to be dispositive without
188 weighing the totality of all relevant factors and circumstances.

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190 Section 10. [*Open-Market Sale, Sealed Bids, or Auction.*]

191 (a) If the court orders a sale of heirs property, the sale must be an open-market sale unless the
192 court finds that a sale by sealed bids or an auction would be more economically advantageous and in
193 the best interest of the cotenants as a group.

194 (b) If the court orders an open-market sale and the parties, not later than 10 days after the
195 entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the
196 court shall appoint that broker and establish a reasonable commission. If the parties do not agree on a
197 broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the

198 property for sale and shall establish a reasonable commission. The broker shall offer the property for
199 sale in a commercially reasonable manner at a price not lower than the determination of value and on
200 the terms and conditions established by the court.

201 (c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to
202 purchase the property for at least the determination of value:

203 (1) the broker shall comply with the reporting requirements set forth in section 11;
204 and

205 (2) the sale may be completed in accordance with state law other than this Act.

206 (d) If the broker appointed under subsection (b) does not obtain within a reasonable time an
207 offer to purchase the property for at least the determination of value, the court, after hearing, may:

208 (1) approve the highest outstanding offer, if any;

209 (2) redetermine the value of the property and order that the property continue to be
210 offered for an additional time; or

211 (3) order that the property be sold by sealed bids or at an auction.

212 (e) If the court orders a sale by sealed bids or an auction, the court shall set terms and
213 conditions of the sale. If the court orders an auction, the auction must be conducted under the
214 provisions of [insert citation] or [insert reference to foreclosure sale.]

215 (f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a
216 credit against the price in an amount equal to the purchaser's share of the proceeds.

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218 Section 11. [*Report of Open-Market Sale.*]

219 (a) Unless required to do so within a shorter time by [insert citation], a broker appointed
220 under Section 10 (b) to offer heirs property for open-market sale shall file a report not later than
221 seven days after receiving an offer to purchase the property for at least the value determined under
222 Section 6 or 10.

223 (b) The report required by subsection (a) must contain the following information:

224 (1) a description of the property to be sold to each buyer;

225 (2) the name of each buyer;

226 (3) the proposed purchase price;

227 (4) the terms and conditions of the proposed sale, including, without limitation, the
228 terms of any owner financing;

229 (5) the amounts to be paid to lienholders;

230 (6) a statement of contractual or other arrangements or conditions of the broker's
231 commission; and

232 (7) other material facts relevant to the sale.

233

234 Section 12. [*Uniformity of Application and Construction.*] In applying and construing this
235 uniform act, consideration must be given to the need to promote uniformity of the law with respect
236 to its subject matter among states that enact it.

237

238 Section 13. [*Relation to Electronic Signatures in Global and National Commerce.*] This Act
239 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
240 Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that Act, 15
241 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described
242 in section 103(b) of that Act, 15 U.S.C. § 7003(b).

243

244 Section 14. [*Effective Date.*] This Act takes effect ...