

# UNIFORM PARTITION OF HEIRS PROPERTY ACT\*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR  
CHICAGO, ILLINOIS  
JULY 9 - JULY 16, 2010

*WITHOUT PREFATORY NOTE OR COMMENTS*

COPYRIGHT © 2010

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

July 21, 2010

\*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

## UNIFORM PARTITION OF HEIRS PROPERTY ACT

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Partition of Heirs Property Act.

*Legislative Note: This Act is likely to be an additional chapter, subchapter, or subpart of the state's existing partition statute.*

**SECTION 2. DEFINITIONS.** In this [act]:

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

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is neither that other individual's ascendant nor descendant.

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

(4) "Determination of value" means an order of a court determining the fair market value of heirs property under Section 6 or 10 or the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of the action:

(A) There is no agreement in a record binding all the cotenants that governs the partition of the property.

(B) One or more of the cotenants acquired title from a relative whether living or deceased.

(C) Any of the following applies:

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

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

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

(6) “Partition by sale” means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale conducted in the manner described in Section 10.

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

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

(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption or other law of this state.

### **SECTION 3. APPLICABILITY.**

(a) In an action to partition real property under [insert reference to general partition statute] the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this [act] unless all of the cotenants otherwise agree in a record.

(b) This [act] supplements [insert reference to general partition statute] and, if an action is governed by this [act], replaces provisions of [insert reference to general partition statute] that are inconsistent with this [act].

### **SECTION 4. NOTICE BY POSTING.**

(a) This [act] does not limit or affect the method by which service of a complaint in a

partition action may be made.

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

**SECTION 5. [COMMISSIONERS].** If the court appoints [commissioners] pursuant to [insert reference to general partition statute], each [commissioner] must, in addition to the requirements and disqualifications applicable to [commissioners] in [insert reference to general partition statute], be disinterested, impartial, and neither a party to nor a participant in the action.

*Legislative Note: The term commissioner is used by nearly every state. However, there are some exceptions. For example, California uses the term referee and Georgia uses the term partitioner.*

**SECTION 6. DETERMINATION OF VALUE.**

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that 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 method.

(c) If the court determines that the evidentiary value of the 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 give 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 clerk of 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'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 no sooner 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 notify the parties of the value.

## **SECTION 7. COTENANT BUYOUT.**

(a) Following the determination of value under Section 6, the court shall notify 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 court 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 those cotenants' interests 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):

(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 apportion those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy, and notify all the parties of that fact and of the price to be paid by each electing cotenant.

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

(e) If the court notifies the parties under either subsection (d)(1) or (2), the court shall set a date, not sooner than 60 days thereafter, by which electing cotenants must pay the price into the court. After this date:

(1) If all electing cotenants timely pay their apportioned price, the court shall issue an order reallocating all of the cotenants' interests and disburse the amounts held by it to the

persons entitled to them.

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

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

(f) Not later than 20 days after the court gives the notice described in subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After that date:

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

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 8(a) and (b) as if none of the interests of the cotenants that requested partition by sale had been purchased.

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

by the court.

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

(h) If the court receives a timely request under subsection (g), the court may, after hearing, deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable; provided, that:

(i) a sale authorized under this section shall only occur after the purchase prices for any interests offered for sale under this section have been paid into court and those interests have been reallocated among the cotenants as provided in that section; and

(ii) the purchase price for any interests of non-appearing cotenants shall be based on the court's determination of value under Section 6.

#### **SECTION 8. PARTITION ALTERNATIVES.**

(a) If all the interests of all cotenants that petitioned for sale that become available for purchase pursuant to Section 7 are not purchased by other cotenants or if after conclusion of the buyout under Section 7 there is any cotenant remaining that has requested partition in kind, the court shall order partition in kind unless the court finds, after consideration of the factors listed in Section 9, that partition in kind will result in [great] [manifest] prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind, the court shall order partition by sale



pursuant to Section 10 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind, the court may also require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value.

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

#### **SECTION 9. CONSIDERATIONS FOR PARTITION IN KIND.**

(a) In determining whether partition in kind would result in [great][manifest] prejudice to the cotenants as a group, the court shall consider the following:

- (1) whether the heirs property practicably may be divided among the cotenants;
- (2) whether partition in kind would apportion the property in such a way that the fair market value in the aggregate of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which the court-ordered sale would likely occur;
- (3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to that cotenant who are or were relatives of that cotenant or each other;
- (4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

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

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

(7) any other relevant factor.

(b) The court may not consider any one factor in subsection (a) to be dispositive, but shall instead weigh the totality of all relevant factors and circumstances.

#### **SECTION 10. OPEN-MARKET SALE, SEALED BIDS OR AUCTION.**

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

(b) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint that broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value, the broker shall comply with the

reporting requirements set forth in Section 11 and the sale may then be completed in accordance with state law.

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

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

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

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

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under [insert reference to general partition statute or, if there is none, insert reference to foreclosure sale].

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

#### **SECTION 11. REPORT OF OPEN-MARKET SALE.**

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

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

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

(2) the name of each buyer;

(3) the proposed purchase price;

- (4) the terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) the amounts to be paid to lienholders;
- (6) a statement of contractual or other arrangements or conditions of the broker's commission; and
- (7) other material facts relevant to the sale.

**SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 14. TRANSITIONAL PROVISION.** This [act] applies to partition actions filed on or after the effective date.

**SECTION 15. EFFECTIVE DATE.** This [act] takes effect . . . .