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TO: Senator Coleman, Co-Chair, Judiciary Committee
Senator Doyle, Vice-Chair, Judiciary Committee
Senator Kissel, Ranking Member, Judiciary Committee
Representative Fox, Co-Chair, Judiciary Committee
Representative Ritter, Vice-Chair, Judiciary Committee and
Representative Rebimbas, Ranking Member, Judiciary
Committee:

FROM: William R. Breetz, Esq., Connecticut Uniform Law Commission

DATE: April 12, 2013

RE: **UNIFORM PARTITION OF HEIRS PROPERTY ACT**

**[SECTIONS 1 THROUGH 13 OF SB 1162] “AN ACT
CONCERNING THE ADOPTION OF UNIFORM ACTS
RELATING TO THE DISPOSITION OF PROPERTY AND THE
EFFECTIVENESS OF A VALIDLY EXECUTED POWER OF
ATTORNEY”**

Ladies and Gentlemen:

I write to encourage your favorable vote in favor of the **Uniform
Partition of Heirs Property Act in SB 1162.**

I am a member of the Connecticut delegation to the Uniform Law Commission, having been appointed by successive governors of this State for more 20 years. As a Commissioner, I served as a member of the Drafting Committee on this Act for more than two years, and believe I am qualified to describe its purpose and impact.

From that perspective, I am confident that our State would benefit by enacting a statute in which I and many other thoughtful lawyers and advocates have invested considerable volunteer time in the hope of helping the Act's intended beneficiaries.

Having been at the table, I can tell you that the Act was carefully drafted and is widely applauded by its supporters. I know of no opposition to the Act. I believe that in those cases where the Act would apply, it offers a fair and just outcome to all the stakeholders.

The Act's only drawbacks are these: (1) the subject matter is dull; (2) the language of the Act is both dense and relatively complex; and (3) the Act has no natural constituency lobbying for its passage. Thus, the Act will have no appeal to headline writers or the nightly newscasters.

But for a legislative committee comprised of attorneys, it should have the obvious appeal of doing considerable good - in a legally creative way - for those affected by it, at no cost to the taxpayer and with no political risk for those elected officials keen to do the right thing.

I hope this brief memo will draw your attention and your support.

INTRODUCTION AND SUMMARY This Act creates a legal process to resolve an uncommon but most troublesome problem: the potential 'partition' or division of a parcel of real estate owned in a tenancy in common by a group of people related by blood or marriage – the 'heirs' in this Act. When there is a falling out among those 'heirs' or among the remaining heirs and those to whom former heirs sold their interests – the legal solution of 'partitioning'- or dividing – the entire property can be devastating.

I describe the theoretical problem and the traditional solution in some detail below. While I commend that description to you, I fear that detail may lose your attention.

Suffice it to say that the process of dividing real estate owned by tenants in common, as described below, is both cumbersome and expensive. More importantly, in the case of a family dispute, the situation can create disagreement and inequity among those who wish to retain the 'family homestead' and those more distant relatives who simply want the money that a sale would yield.

Stated in very simple terms, the Act's goal is to create an alternative process by which those heirs who wish to retain ownership of the 'family homestead' can do so. The Act encourages this outcome by enabling the family members who wish to retain the property intact, or who wish to have all heirs pay their share of expenses, to either: (1) require a person who wishes to have the entire property sold to sell only his or her share at fair market value; or (2) require a person who refuses to pay his or her fair share of the expenses to sell that share to those who are paying the expenses, again at fair market value.

DESCRIPTION OF THE ACT AND ITS GOALS The idea for this Act arose in response to a common practice in the Deep South where large tracts of rural real estate- originally of little value and owned by African American farming families - often passed by intestate succession because of a widespread failure in that poor community to use the legal system. As years passed, that rural farmland (sometimes located on the outskirts of such urban centers as Atlanta and Birmingham) became very valuable and was often the subject of abusive practices by unscrupulous developers. Interestingly, however, as the drafting process proceeded, it became clear that this issue was

not restricted to southern African American populations but was a common occurrence in many other rural impoverished cultures, including groups as widespread as Native American and Mexican populations in the Southwest and white potato farm families in Maine.

In Connecticut, while I am not personally aware of a specific population that suffers from this status, I have little doubt that there remain pockets of small lower income property owners in both rural and urban communities whose reluctance to use the services of lawyers have resulted in fractionalized ownership of farms and other family homestead and that would benefit from this Act.

Under this Act, the term 'Heirs property' means real property held in tenancy in common which satisfies all of the following requirements:

FIRST - One or more of the cotenants acquired title from a relative; and

SECOND – any one of the following circumstances exists:

(i) Twenty per cent or more of the ownership interests in the parcel are held by cotenants who are relatives;

(ii) Twenty per cent or more of the ownership interests are held by an individual who acquired title from a relative; or

(iii) Twenty per cent or more of the cotenant owners are relatives

The particular problem posed by tenancies in common of 'heirs property' is created when title to real estate passes from the owner of the real estate to the owner's heirs after the owner dies without a will – a situation known in legal jargon as 'intestate succession.' When there is no will, the law of every state – in Connecticut, that law appears in C.G.S. §§ 45a-437 through 440 - defines how that real estate is to be divided among the decedent's heirs. Often, these statutes result in the ownership of a single parcel being divided among several relatives as 'tenants in common'- with each relative owning an undivided percentage or fractional share of that one parcel of real estate.

If some of those undivided interests in that single parcel of real estate are then inherited over time by several successive generations of heirs through intestate succession, it is not uncommon for that original parcel to be owned by scores of individuals scattered across the nation. Often, one or several of those heirs may live on or use the real estate – and pay for the taxes and maintenance – while other fractional owners have no real connection with the property and pay nothing for its upkeep.

Since the problem of disagreements among co-owners in tenancies in common have existed for centuries, our statutes have long provided a legal means by which those owners may

resolve their conflicts. The legal process is known as 'partition' and In Connecticut the partition statute is C.G.S. §52-495.

Typically, if the parcel is susceptible to a 'partition in kind' – that is, a physical division of the real estate into two or more pieces - the court will order that physical division and assign each co-tenant full ownership of a piece of the original parcel. Alternatively, especially in cases where it is not practical to divide a single parcel into multiple parcels [think of a single family house in a tract sub-division] the court may order a 'partition by sale', in which case the real estate will be sold as a single parcel, and the cash proceeds of the sale will be divided among the co-tenants.

One of two major problems – unique in 'family' cases - can occur. In the first, a family member may sell his or her interest to a disinterested 3d party who then seeks to force a sale of the entire property and dispossess family members who live on the property. This was the unique problem occurring in the rural South, where developers sometimes identified a distant family member owning a small share of the property, purchased that share, and thus became a co-tenant. In that capacity, the stranger co-tenant would bring a partition action and force the sale of the entire parcel, often for purchase at a price no one in the family could afford to pay. The co-tenant or his affiliate would buy the parcel and develop it, and the family homestead would be lost to those family members who would have wished to keep it intact.

Another common challenge in these family circumstances is that some of the relatives who own a share of the property simply refuse to pay their proportionate share of the expenses of maintaining the property and those remaining relatives who wish to preserve the property must pay for the property's upkeep without enjoying all the benefit of that effort. To make matters worse, without the consent of the co-tenant, the 'engaged' family members have no ability to mortgage the property or – should they wish – to sell it.

In either circumstance, the traditional remedy of a partition action is entirely unsuited to the facts described above.

The Act's solution is simple and creative. It substitutes a court appraisal for a full parcel sale and creates realistic devices for the owners intent on retaining the property to buy out those who wish to force a sale, or who refuse to contribute to the upkeep of the property.

