



House of Representatives

File No. 691

General Assembly

February Session, 2014

(Reprint of File No. 546)

Substitute House Bill No. 5218
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2014

***AN ACT CONCERNING THE ADOPTION OF THE UNIFORM
PARTITION OF HEIRS' PROPERTY ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) Sections 1 to 13,
2 inclusive, of this act may be cited as the Uniform Partition of Heirs'
3 Property Act.

4 Sec. 2. (NEW) (*Effective October 1, 2014*) As used in this section and
5 sections 3 to 13, inclusive, of this act:

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

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

12 (3) "Descendant" means an individual who follows another

13 individual in lineage, in the direct line of descent from the other
14 individual;

15 (4) "Determination of value" means a court order (A) determining
16 the fair market value of heirs' property under section 6 or 10 of this act,
17 or (B) adopting the valuation of the property agreed to by all
18 cotenants;

19 (5) "Heirs' property" means real property held in tenancy in
20 common which satisfies all of the following requirements as of the date
21 of filing a partition action:

22 (A) There is no agreement in a record binding all the cotenants
23 which governs the partition of the property;

24 (B) One or more of the cotenants acquired title from a relative,
25 whether living or deceased; and

26 (C) Any of the following apply:

27 (i) Twenty per cent or more of the interests are held by cotenants
28 who are relatives;

29 (ii) Twenty per cent or more of the interests are held by an
30 individual who acquired title from a relative, whether living or
31 deceased; or

32 (iii) Twenty per cent or more of the cotenants are relatives;

33 (6) "Partition by sale" means a court-ordered sale of the entire heirs'
34 property, whether by auction, sealed bids, or open-market sale
35 conducted under section 10 of this act;

36 (7) "Partition in kind" means the division of heirs' property into
37 physically distinct and separately titled parcels;

38 (8) "Record" means information that is inscribed on a tangible
39 medium or that is stored in an electronic or other medium and is

40 retrievable in perceivable form; and

41 (9) "Relative" means an ascendant, descendant or collateral or an
42 individual otherwise related to another individual by blood, marriage,
43 adoption or law of this state other than the provisions of sections 1 to
44 13, inclusive, of this act.

45 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) The provisions of sections
46 1 to 13, inclusive, of this act apply to partition actions filed on or after
47 October 1, 2014.

48 (b) In an action to partition real property under either section 45a-
49 326 or 52-495 of the general statutes, as amended by this act, as
50 applicable, the court shall determine whether the property is heirs'
51 property. If the court determines that the property is heirs' property,
52 the property shall be partitioned under sections 1 to 13, inclusive, of
53 this act unless all of the cotenants otherwise agree in a record.

54 (c) The provisions of sections 1 to 13, inclusive, of this act
55 supplement chapter 919 of the general statutes, and, if an action is
56 governed by sections 1 to 13, inclusive, of this act, replace provisions of
57 chapter 919 of the general statutes that are inconsistent with the
58 provisions of sections 1 to 13, inclusive, of this act.

59 Sec. 4. (NEW) (*Effective October 1, 2014*) (a) The provisions of sections
60 1 to 13, inclusive, of this act do not limit or affect the method by which
61 service of a complaint in a partition action may be made.

62 (b) If the plaintiff in a partition action seeks an order of notice by
63 publication and the court determines that the property may be heirs'
64 property, the plaintiff, not later than ten days after the date of the
65 court's determination, shall post and maintain while the action is
66 pending a conspicuous sign on the property that is the subject of the
67 action. The sign shall state that the action has commenced and identify
68 the name and address of the court and the common designation by
69 which the property is known. The court may require the plaintiff to
70 publish on the sign the name of the plaintiff and the known

71 defendants.

72 Sec. 5. (NEW) (*Effective October 1, 2014*) If the court appoints a
73 committee pursuant to section 52-495 of the general statutes, each
74 committee member shall be disinterested and impartial and not a party
75 to or a participant in the action.

76 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) Except as provided in
77 subsections (b) and (c) of this section, if the court determines that the
78 property that is the subject of a partition action is heirs' property, the
79 court shall determine the fair market value of the property by ordering
80 an appraisal pursuant to subsection (d) of this section.

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

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

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

93 (e) If an appraisal is conducted pursuant to subsection (d) of this
94 section, not later than ten days after the date on which the appraisal is
95 filed with the court, the court shall send notice to each party with a
96 known address, stating:

97 (1) The appraised fair market value of the property;

98 (2) That the appraisal is available at the clerk's office; and

99 (3) That a party may file with the court an objection to the appraisal

100 not later than thirty days after the date on which the notice is sent,
101 stating the grounds for the objection.

102 (f) If an appraisal is filed with the court pursuant to subsection (d) of
103 this section, the court shall conduct a hearing to determine the fair
104 market value of the property not earlier than thirty days after the date
105 on which a copy of the notice of the appraisal is sent to each party
106 under subsection (e) of this section, whether or not an objection to the
107 appraisal is filed under subdivision (3) of subsection (e) of this section.
108 In addition to the court-ordered appraisal, the court may consider any
109 other evidence of value offered by a party.

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

114 Sec. 7. (NEW) (*Effective October 1, 2014*) (a) If any cotenant requested
115 partition by sale, after the determination of value under section 6 of
116 this act, the court shall send notice to the parties that any cotenant
117 except a cotenant that requested partition by sale may buy all the
118 interests of the cotenants that requested partition by sale.

119 (b) Not later than forty-five days after the date on which the notice
120 is sent under subsection (a) of this section, any cotenant except a
121 cotenant that requested partition by sale may give notice to the court
122 that it elects to buy all the interests of the cotenants that requested
123 partition by sale.

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

128 (d) After expiration of the forty-five-day period prescribed in
129 subsection (b) of this section, the following rules apply:

130 (1) If only one cotenant elects to buy all the interests of the cotenants
131 that requested partition by sale, the court shall notify all the parties of
132 that fact.

133 (2) If more than one cotenant elects to buy all the interests of the
134 cotenants that requested partition by sale, the court shall (A) allocate
135 the right to buy those interests among the electing cotenants based on
136 each electing cotenant's existing fractional ownership of the entire
137 parcel divided by the total existing fractional ownership of all
138 cotenants electing to buy; and (B) send notice to all the parties of that
139 fact and of the price to be paid by each electing cotenant.

140 (3) If no cotenant elects to buy all the interests of the cotenants that
141 requested partition by sale, the court shall send notice to all the parties
142 of that fact and resolve the partition action under subsections (a) and
143 (b) of section 8 of this act.

144 (e) If the court sends notice to the parties under subdivision (1) or
145 (2) of subsection (d) of this section, the court shall set a date, not earlier
146 than sixty days after the date on which the notice was sent, by which
147 electing cotenants must pay their apportioned price to the court. After
148 the court sets such date, the following rules apply:

149 (1) If all electing cotenants timely pay their apportioned price to the
150 court, the court shall issue an order reallocating all the interests of the
151 cotenants and disburse the amounts held by the court to the persons
152 entitled to such amounts.

153 (2) If no electing cotenant timely pays its apportioned price, the
154 court shall resolve the partition action under subsections (a) and (b) of
155 section 8 of this act, as if the interests of the cotenants that requested
156 partition by sale were not purchased.

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

161 (f) Not later than twenty days after the date on which the court
162 gives notice pursuant to subdivision (3) of subsection (e) of this
163 section, any cotenant that paid may elect to purchase all of the
164 remaining interest by paying the entire price to the court. After the
165 twenty-day period, the following rules apply:

166 (1) If only one cotenant pays the entire price for the remaining
167 interest, the court shall issue an order reallocating the remaining
168 interest to that cotenant. The court shall promptly issue an order
169 reallocating the interests of all of the cotenants and disburse the
170 amounts held by it to the persons entitled to such amounts.

171 (2) If no cotenant pays the entire price for the remaining interest, the
172 court shall resolve the partition action under subsections (a) and (b) of
173 section 8 of this act, as if the interests of the cotenants that requested
174 partition by sale were not purchased.

175 (3) If more than one cotenant pays the entire price for the remaining
176 interest, the court shall reapportion the remaining interest among
177 those paying cotenants, based on each paying cotenant's original
178 fractional ownership of the entire parcel divided by the total original
179 fractional ownership of all cotenants that paid the entire price for the
180 remaining interest. The court shall promptly issue an order
181 reallocating all of the cotenants' interests, disburse the amounts held
182 by it to the persons entitled to such amounts, and promptly refund any
183 excess payment held by the court.

184 (g) Not later than forty-five days after the date on which the court
185 sends notice to the parties pursuant to subsection (a) of this section,
186 any cotenant entitled to buy an interest under this section may request
187 that the court authorize the sale as part of the pending action of the
188 interests of cotenants named as defendants and served with the
189 complaint but that did not appear in the action.

190 (h) If the court receives a timely request under subsection (g) of this
191 section, the court, after hearing, may deny the request or authorize the
192 requested additional sale on terms that the court determines are fair

193 and reasonable, subject to the following limitations:

194 (1) A sale authorized under this subsection may occur only after the
195 purchase prices for all interests subject to sale under subsections (a) to
196 (f), inclusive, of this section have been paid to the court and those
197 interests have been reallocated among the cotenants as provided in
198 subsections (a) to (f), inclusive, of this section; and

199 (2) The purchase price for the interest of a nonappearing cotenant is
200 based on the court's determination of value under section 6 of this act.

201 Sec. 8. (NEW) (*Effective October 1, 2014*) (a) If all the interests of all
202 cotenants that requested partition by sale are not purchased by other
203 cotenants pursuant to section 7 of this act, or if after conclusion of the
204 buyout under section 7 of this act, a cotenant remains that has
205 requested partition in kind, the court shall order partition in kind
206 unless the court, after consideration of the factors listed in section 9 of
207 this act, finds that partition in kind will result in manifest prejudice to
208 the cotenants as a group. In considering whether to order partition in
209 kind, the court shall approve a request by two or more parties to have
210 their individual interests aggregated.

211 (b) If the court does not order partition in kind under subsection (a)
212 of this section, the court shall order partition by sale pursuant to
213 section 10 of this act or, if no cotenant requested partition by sale, the
214 court shall dismiss the action.

215 (c) If the court orders partition in kind pursuant to subsection (a) of
216 this section, the court may require that one or more cotenants pay one
217 or more other cotenants amounts so that the payments, taken together
218 with the value of the in-kind distributions to the cotenants, will make
219 the partition in kind just and proportionate in value to the fractional
220 interests held.

221 (d) If the court orders partition in kind, the court shall allocate to the
222 cotenants who are unknown, cannot be located, or the subject of a
223 default judgment, if their interests were not bought out pursuant to

224 section 7 of this act, a part of the property representing the combined
225 interests of such cotenants as determined by the court and this part of
226 the property shall remain undivided.

227 Sec. 9. (NEW) (*Effective October 1, 2014*) (a) In determining under
228 subsection (a) of section 8 of this act whether partition in kind would
229 result in manifest prejudice to the cotenants as a group, the court shall
230 consider the following:

231 (1) Whether the heirs' property practicably can be divided among
232 the cotenants;

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

238 (3) Evidence of the collective duration of ownership or possession of
239 the property by a cotenant and one or more predecessors in title or
240 predecessors in possession to the cotenant who are or were relatives of
241 the cotenant or each other;

242 (4) A cotenant's sentimental attachment to the property, including
243 any attachment arising because the property has ancestral or other
244 unique or special value to the cotenant;

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

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

253 (7) Any other relevant factor.

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

257 Sec. 10. (NEW) (*Effective October 1, 2014*) (a) If the court orders a sale
258 of heirs' property, the sale shall be an open-market sale unless the
259 court finds that a sale by sealed bids or an auction would be more
260 economically advantageous and in the best interest of the cotenants as
261 a group.

262 (b) If the court orders an open-market sale and the parties, not later
263 than ten days after the date of entry of the order, agree on a real estate
264 broker licensed in this state to offer the property for sale, the court
265 shall appoint the real estate broker and establish a reasonable
266 commission. If the parties do not agree on a real estate broker, the
267 court shall appoint a disinterested real estate broker licensed in this
268 state to offer the property for sale and shall establish a reasonable
269 commission. The real estate broker shall offer the property for sale in a
270 commercially reasonable manner at a price no lower than the
271 determination of value and on the terms and conditions established by
272 the court.

273 (c) If the real estate broker appointed under subsection (b) of this
274 section obtains, within a reasonable time, an offer to purchase the
275 property for at least the determination of value: (1) The real estate
276 broker shall comply with the reporting requirements in section 11 of
277 this act; and (2) the sale may be completed in accordance with
278 requirements of state law other than the requirements prescribed in
279 sections 1 to 13, inclusive, of this act.

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

284 (1) Approve the highest outstanding offer, if any;

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

287 (3) Order that the property be sold by sealed bids or at auction.

288 (e) If the court orders a sale by sealed bids or at auction, the court
289 shall set terms and conditions of the sale. If the court orders an auction,
290 the auction shall be conducted in accordance with the provisions of
291 chapter 919 of the general statutes.

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

295 Sec. 11. (NEW) (*Effective October 1, 2014*) (a) A real estate broker
296 appointed under subsection (b) of section 10 of this act to offer heirs'
297 property for open-market sale shall file a report with the court not later
298 than seven days after the date of receiving an offer to purchase the
299 property for at least the value determined under section 6 or 10 of this
300 act.

301 (b) The report required by subsection (a) of this section shall contain
302 the following information:

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

304 (2) The name of each buyer;

305 (3) The proposed purchase price;

306 (4) The terms and conditions of the proposed sale, including the
307 terms of any owner financing;

308 (5) The amounts to be paid to lienholders;

309 (6) A statement of contractual or other arrangements or conditions
310 of the broker's commission; and

311 (7) Other material facts relevant to the sale.

312 Sec. 12. (NEW) (*Effective October 1, 2014*) In applying and construing
 313 the provisions of sections 1 to 13, inclusive, of this act, consideration
 314 shall be given to the need to promote uniformity of the law with
 315 respect to its subject matter among states that enact such uniform
 316 provisions.

317 Sec. 13. (NEW) (*Effective October 1, 2014*) The provisions of sections 1
 318 to 12, inclusive, of this act, modify, limit and supersede the Electronic
 319 Signatures in Global and National Commerce Act, 15 USC Section 7001
 320 et seq., but do not modify, limit or supersede Section 101(c) of said act,
 321 15 USC Section 7001(c), or authorize electronic delivery of any of the
 322 notices described in Section 103(b) of said act, 15 USC Section 7003(b).

323 Sec. 14. Subsection (a) of section 45a-326 of the general statutes is
 324 repealed and the following is substituted in lieu thereof (*Effective*
 325 *October 1, 2014*):

326 (a) During the settlement of the estate of any person who died
 327 owning an undivided interest in any property not specifically devised
 328 or bequeathed, the executor or administrator of the estate and the
 329 owner or owners of the major portion of the other interest therein may
 330 apply in writing to the court of probate having jurisdiction of the estate
 331 to order partition of the same. Except as provided in sections 52-495 to
 332 52-503, inclusive, and sections 1 to 13, inclusive, of this act, the court
 333 shall hear and decide the petition for partition in accordance with this
 334 section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	New section
Sec. 6	<i>October 1, 2014</i>	New section
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	New section

Sec. 9	<i>October 1, 2014</i>	New section
Sec. 10	<i>October 1, 2014</i>	New section
Sec. 11	<i>October 1, 2014</i>	New section
Sec. 12	<i>October 1, 2014</i>	New section
Sec. 13	<i>October 1, 2014</i>	New section
Sec. 14	<i>October 1, 2014</i>	45a-326(a)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill creates procedures involving certain private property and does not result in a fiscal impact.

House "A" makes a technical and conforming change and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5218 (as amended by House "A")******AN ACT CONCERNING THE ADOPTION OF THE UNIFORM PARTITION OF HEIRS' PROPERTY ACT.*****SUMMARY:**

This bill creates procedures governing certain actions to partition real property that is owned by multiple parties as tenants in common, a form of ownership where more than one person owns the property and each has an interest that does not terminate on his or her death and can be passed on to his or her heirs.

A partition action happens when a party (cotenant) seeks to physically divide the property into separate parcels. Under the bill, when a cotenant files an action to partition property, the court must (1) determine if the property is heirs' property based on the bill's criteria and determine its fair market value and (2) follow the bill's procedures for partitioning it instead of those in current law. Those procedures allow cotenants to buy all of the interests of cotenants seeking to sell the property in the partition action. If all of those interests are purchased, the court reallocates interest in the property.

If no cotenant elects to buy the interests, the court must partition the property by (1) selling it (partition by sale) or (2) physically dividing it into separate parcels (partition in kind), depending on the circumstances the bill specifies. If at least one cotenant elects to buy, but after following the bill's procedures some of the interests remain unpurchased, the court must order partition by sale or in kind.

The bill's provisions apply to actions filed on or after October 1, 2014.

*House Amendment "A" makes a technical and conforming change.

EFFECTIVE DATE: October 1, 2014

§ 2 — HEIRS' PROPERTY

The bill's partition procedures apply to heirs' property, which the bill defines as real property held in tenancy in common under certain circumstances. Property falls under this definition when, on the date a partition action is filed:

1. there is no agreement in a record binding all cotenants that governs partition;
2. at least one cotenant acquired title from a living or deceased relative; and
3. at least 20% of the (a) interests are held by cotenants who are relatives, (b) interests are held by an individual who acquired title from a living or deceased relative, or (c) cotenants are relatives.

The bill defines "relatives" to include those in an individual's direct line of lineage (such as a person's parents and children); others considered relatives under intestate succession law (such as uncles and cousins); and individuals otherwise related by blood, marriage, adoption, or state law.

§ 3 — WHEN THE BILL'S PROVISIONS APPLY TO A PARTITION ACTION

If a party brings a partition action in probate or Superior court under existing law (see BACKGROUND), the bill requires the court to determine if the property is heirs' property. If it is, the court and the parties must follow the bill's provisions instead of existing law. The bill applies unless all cotenants agree in a record otherwise.

The bill provides that it supplements existing law. But when the bill applies to a partition action, its provisions replace any inconsistent provisions of existing law.

§ 4 — SERVICE AND NOTICE

The bill does not affect the method of serving a complaint in a partition action. But, if the plaintiff seeks an order of notice by publication and the court determines the property may be heirs' property, the bill requires the plaintiff to post a conspicuous sign on the property. The plaintiff must post the sign within 10 days of the court's determination and keep it posted during the action. The sign must state:

1. that the action began,
2. the court's name and address, and
3. how the property is commonly known.

The court may also require posting the plaintiff's and any known defendant's name.

§ 5 — APPOINTING A COMMITTEE

Existing law allows the court to appoint a committee to assist it in an action to partition property. If it does so, the bill requires committee members to be disinterested and impartial and prohibits parties or other participants in the action from being committee members.

§ 6 — DETERMINING FAIR MARKET VALUE***Options to Determine Value***

After the court determines that property is heirs' property, the bill requires it to determine the property's fair market value by using any value or method all cotenants agreed to or, if they do not agree on one, ordering an appraisal. If it orders an appraisal, the court must appoint a disinterested Connecticut-licensed real estate appraiser to determine the value.

If the cost of an appraisal outweighs its evidentiary value, the court can hold a hearing to determine the property's value and notify the parties of the value.

Appraised Value

If the court orders an appraisal, the bill requires the appraiser to determine the value assuming a single owner owns the property outright (in fee simple). The appraiser must file a sworn or verified appraisal with the court. The court notifies, within 10 days of receiving the appraisal, all parties with known addresses:

1. of the appraised fair market value,
2. that the appraisal is in the clerk's office, and
3. that a party has 30 days after the notice is sent to state any grounds for objecting to the appraisal.

Whether or not a party objects, the court must hold a hearing to determine fair market value, but not until at least 30 days after sending the notice. The court may consider the appraisal and any other valuable evidence a party offers at the hearing. The court must then send notice of the fair market value to the parties.

§ 7 — OPTION TO PURCHASE INTERESTS AFTER APPRAISAL

The bill allows a cotenant to request partition by sale, which is a court-ordered sale of the entire property by auction, sealed bids, or open-market sale. After such a request, the court must send a notice that any of the other cotenants can buy the interests of the cotenants requesting the sale. A cotenant has 45 days after notice is sent to notify the court that he or she wants to buy these interests. The purchase price of each interest is determined using the fair market value as multiplied by a cotenant's fractional ownership of the property.

If no cotenant elects to buy all of the interests, the bill requires the court to notify the parties and order either partition in kind or partition by sale (see § 8 below). If at least one cotenant elects to buy, the court must follow the procedures described below to determine whether all of the interests will be purchased.

Cotenants Electing to Buy

The bill requires the court to notify the parties if a cotenant elects to buy the interests of all cotenants requesting partition by sale. If more than one cotenant elects to do so, the court must allocate their right to buy interests according to a formula. The following example illustrates how the court would apply the formula. If four cotenants each own 25% of the property and one seeks to sell, the other three cotenants may seek to purchase that interest. The three seeking to purchase would each be able to purchase one-third of the interest that is for sale. The bill requires the court's notice to state the price each cotenant will pay.

The court must set a deadline, which is no sooner than 60 days after sending notice, for these cotenants to pay their apportioned price to the court. The bill applies the following rules after the deadline.

1. If all the electing cotenants pay the appropriate amounts, the court reallocates the cotenants' interests and disburses the money to those entitled to it.
2. If no electing cotenant pays, the court proceeds as if the interests of the cotenants requesting partition by sale were not purchased. This means the court will order either partition in kind or partition by sale (see § 8 below).
3. If at least one electing cotenant fails to pay, the court, on motion, must notify all those that did pay for interests that interests remain outstanding. The court must provide the purchase price for the remaining interests and give the cotenants 20 days to purchase the remaining interests. The court then follows the procedures described below.

Purchasing Additional Interests

When electing cotenants have the option to purchase additional interests as described in #3 above, the bill applies the following rules.

1. If one cotenant pays for all remaining interests, the court reallocates the interests to that cotenant, promptly orders

reallocation of all of the interests, and disburses the amounts paid to those entitled to it.

2. If no cotenant pays for all of the remaining interests, the court must proceed as if the interests of the cotenants requesting partition by sale were not purchased. This means the court will order either partition in kind or partition by sale (see § 8 below).
3. If more than one cotenant pays the entire price for the remaining interests, the court must reapportion the remaining interests among these cotenants according to a formula. The following example illustrates how the court would apply the formula. If two cotenants seek to purchase the remaining interest and one originally owned 10% of the property and the other 20% of the property, the former would be able to purchase one-third of the outstanding interest and the latter two-thirds. The court must promptly reallocate interests, disburse money paid, and refund any excess payments.

Non-Appearing Defendants

The bill allows a cotenant who is entitled to buy an interest to ask the court to authorize the sale of the interests of cotenants who (1) were named as defendants, (2) were served the complaint initiating the action, and (3) did not appear. The cotenant must make this request within 45 days of the court sending its initial notice of the partition by sale. The court can deny or authorize such a sale on fair and reasonable terms after holding a hearing. But the sale of these interests cannot occur until after all other interests have been purchased and reallocated as described above and their purchase price must be based on fair market value.

§§ 8-9 — PARTITION IN KIND OR PARTITION BY SALE

Court Determination

The bill requires the court to order partition in kind (dividing the property physically into separately titled parcels) if it makes certain findings. If the court does not order it, the court must order partition

by sale (see § 10) or dismiss the action if no cotenant requests partition by sale.

Court Findings Requiring Partition in Kind

The bill requires the court to order partition in kind if:

1. all interests of cotenants that requested partition by sale are not purchased under the provisions described above or a cotenant remains who requested partition in kind and
2. it will not result in manifest prejudice to the cotenants as a group.

When considering whether to order partition in kind, the bill requires the court to approve requests to combine individual interests.

To determine whether partition in kind causes manifest prejudice, the court must consider:

1. whether the property can be divided practicably;
2. whether partition apportions the property in a way that the aggregate fair market value of the parcels is materially less than the value of the property as a whole under a court-ordered sale;
3. the duration of ownership or possession by a cotenant and his or her predecessors who were relatives of the cotenant or each other;
4. a cotenant's sentimental attachment to the property including its ancestral, unique, or special value to a cotenant;
5. lawful uses of the property by a cotenant and the harm to a cotenant who can no longer use the property in that way;
6. the degree that cotenants contributed their share of property taxes, insurance, and other ownership expenses or contributed to the property's physical improvement, maintenance, or upkeep;

and

7. other relevant factors.

The bill provides that no one factor is dispositive and the court must weigh the totality of relevant factors and circumstances.

Ordering Partition in Kind

When ordering partition in kind, the bill:

1. allows the court to require some cotenants to pay other cotenants so that payments combined with the value of in-kind distributions make the partition just and proportionate in value to the fractional interests the cotenants held and
2. requires the court to allocate part of the property to cotenants who are unknown, cannot be located, or are the subject of a default judgment (this must represent their combined interest and the court does not divide up this portion of the property).

§§ 10-11 — OPEN-MARKET SALE

If the court orders a sale, the bill requires an open-market sale unless it finds a sale by sealed bids or auction is more economically advantageous and in the best interests of the cotenants as a group.

The bill allows the parties, within 10 days of the court's order of an open-market sale, to choose a Connecticut-licensed real estate broker to offer the property for sale. The court must appoint a broker chosen by the parties and set a reasonable commission. If the parties do not agree on a broker, the court must appoint a disinterested broker and set his or her commission.

The broker must offer the property for sale in a commercially reasonable manner for at least the fair market value and under any terms and conditions set by the court.

If the broker obtains an offer for at least the determined value within a reasonable time, the broker must file a report with the court

within seven days of receiving the offer and can complete the sale. The report must (1) describe the property to be sold to each buyer, (2) name each buyer and the purchase price, (3) state the sale's terms and conditions including any owner financing terms, (5) state any amounts to be paid to lienholders, (6) describe contractual and other arrangements or conditions of the broker's commission, and (7) provide other relevant material facts.

If the broker does not obtain such an offer, the court can hold a hearing and (1) approve the highest of any outstanding offers, (2) redetermine the property's value and continue to have the property offered for sale, or (3) order the property sold by sealed bids or auction.

The court must set the conditions of any sale by sealed bids or auction and an auction follows the existing law regarding partitions. (Existing law regarding partitions does not explicitly address auctions, although a court ordering the sale of property in a partition could presumably order a sale by auction.)

If the purchaser is someone who is entitled to a share of the proceeds, he or she receives a credit against the purchase price for that amount.

§§ 12-13 — OTHER PROVISIONS

In applying and construing the bill's provisions, the bill requires consideration of the need to promote uniformity with respect to its subject matter among states that have enacted the uniform provisions.

The bill provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act. But it does not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures (such as when consumers are considered to have consented to electronic disclosures) or (2) authorize electronic delivery of specified notices that are not subject to E-SIGN.

BACKGROUND

Probate Court Partitions (CGS § 45a-326)

During the settlement of an estate of a deceased person who owned an interest in property that he or she did not specifically address in a will or other binding document, the law allows the estate executor or administrator or another owner of the major portion of the other interests in the property to apply to the probate court for partition.

Unless a partition petition is signed by all those with interests in the property, the probate court must provide notice and hold a hearing. The probate court can order partition only if it is in the best interests of the estate and parties. If the court believes that selling the property better promotes the owners' interests or the property cannot be beneficially divided to distribute it, the court can order a sale. Unless all the parties signed the petition, the court cannot order the sale until providing notice and a hearing and finding that the sale is in the estate's and parties' best interests.

The probate court can appoint a committee of three disinterested people to partition the property. A portion of the property given to the deceased person's estate is treated as if it had been partitioned during his or her lifetime. A trustee must hold the share for any party entitled to it whose name and residence is unknown.

Other Partition or Sale Action (CGS § 52-495 et seq.)

The law allows a court to order property partitioned on complaint of an interested person. The court can appoint a committee to partition the property.

When a deceased tenant in common (and others with certain ownership interests) devises his or her interest in the property with a contingent interest (a future transfer of the interest that may or may not occur), a person may file a complaint with the court to partition the property between those with interests.

On complaint of an interested party, a court can order the sale of property owned by two or more people if it will better promote the

interest of the owners. If one or more of the owners have only a minimal interest in the property and a sale would not promote the interest of the owners, the court can order an equitable distribution, with just compensation to the owners with minimal interests, as will better promote the owners' interests.

The court can appoint a committee to make a sale. The court must make reasonable orders to protect any share that is owed to a party whose name or residence is not known.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/28/2014)