



General Assembly

February Session, 2014

***Raised Bill No. 5218***

LCO No. 1067



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

***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 section 52-495 of the  
49 general statutes, the court shall determine whether the property is  
50 heirs' property. If the court determines that the property is heirs'  
51 property, the property shall be partitioned under sections 1 to 13,  
52 inclusive, of this act unless all of the cotenants otherwise agree in a  
53 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 subdivisions (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 broker and establish a reasonable commission. If the  
266 parties do not agree on a broker, the court shall appoint a disinterested  
267 real estate broker licensed in this state to offer the property for sale and  
268 shall establish a reasonable commission. The broker shall offer the  
269 property for sale in a commercially reasonable manner at a price no  
270 lower than the determination of value and on the terms and conditions  
271 established by the court.

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

279 (d) If the broker appointed under subsection (b) of this section does

280 not obtain, within a reasonable time, an offer to purchase the property  
281 for at least the determination of value, the court, after hearing, may:

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

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

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

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

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

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

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

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

301 (2) The name of each buyer;

302 (3) The proposed purchase price;

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

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

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

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

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

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

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

**Statement of Purpose:**

To adopt the Uniform Partition of Heirs' Property Act.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*