



# Senate

General Assembly

**File No. 736**

*January Session, 2015*

Substitute Senate Bill No. 900

*Senate, April 23, 2015*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***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, 2015*) 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, 2015*) 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, 2015*) (a) The provisions of sections  
46 1 to 13, inclusive, of this act apply to partition actions filed on or after  
47 October 1, 2015.

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

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

60 Sec. 4. (NEW) (*Effective October 1, 2015*) (a) The provisions of sections  
61 1 to 13, inclusive, of this act do not limit or affect the method by which  
62 service of a complaint in a partition action may be made.

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

73 Sec. 5. (NEW) (*Effective October 1, 2015*) If the court appoints a  
74 committee pursuant to section 52-495 of the general statutes, each  
75 committee member shall be disinterested and impartial and not a party  
76 to or a participant in the action.

77 Sec. 6. (NEW) (*Effective October 1, 2015*) (a) Except as provided in  
78 subsections (b) and (c) of this section, if the court determines that the  
79 property that is the subject of a partition action is heirs' property, the  
80 court shall determine the fair market value of the property by ordering  
81 an appraisal pursuant to subsection (d) of this section.

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

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

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

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

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

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

100 (3) That a party may file with the court an objection to the appraisal  
101 not later than thirty days after the date on which the notice is sent,  
102 stating the grounds for the objection.

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

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

115 Sec. 7. (NEW) (*Effective October 1, 2015*) (a) If any cotenant requested  
116 partition by sale, after the determination of value under section 6 of  
117 this act, the court shall send notice to the parties that any cotenant  
118 except a cotenant that requested partition by sale may buy all the  
119 interests of the cotenants that requested partition by sale.

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

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

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

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

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

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

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

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

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

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

162 (f) Not later than twenty days after the date on which the court  
163 gives notice pursuant to subdivision (3) of subsection (e) of this  
164 section, any cotenant that paid may elect to purchase all of the

165 remaining interest by paying the entire price to the court. After the  
166 twenty-day period, the following rules apply:

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

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

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

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

191 (h) If the court receives a timely request under subsection (g) of this  
192 section, the court, after hearing, may deny the request or authorize the  
193 requested additional sale on terms that the court determines are fair  
194 and reasonable, subject to the following limitations:

195 (1) A sale authorized under this subsection may occur only after the

196 purchase prices for all interests subject to sale under subsections (a) to  
197 (f), inclusive, of this section have been paid to the court and those  
198 interests have been reallocated among the cotenants as provided in  
199 subsections (a) to (f), inclusive, of this section; and

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

202 Sec. 8. (NEW) (*Effective October 1, 2015*) (a) If all the interests of all  
203 cotenants that requested partition by sale are not purchased by other  
204 cotenants pursuant to section 7 of this act, or if after conclusion of the  
205 buyout under section 7 of this act, a cotenant remains that has  
206 requested partition in kind, the court shall order partition in kind  
207 unless the court, after consideration of the factors listed in section 9 of  
208 this act, finds that partition in kind will result in manifest prejudice to  
209 the cotenants as a group. In considering whether to order partition in  
210 kind, the court shall approve a request by two or more parties to have  
211 their individual interests aggregated.

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

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

222 (d) If the court orders partition in kind, the court shall allocate to the  
223 cotenants who are unknown, cannot be located, or the subject of a  
224 default judgment, if their interests were not bought out pursuant to  
225 section 7 of this act, a part of the property representing the combined  
226 interests of such cotenants as determined by the court and this part of  
227 the property shall remain undivided.

228       Sec. 9. (NEW) (*Effective October 1, 2015*) (a) In determining under  
229 subsection (a) of section 8 of this act whether partition in kind would  
230 result in manifest prejudice to the cotenants as a group, the court shall  
231 consider the following:

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

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

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

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

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

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

254       (7) Any other relevant factor.

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

258       Sec. 10. (NEW) (*Effective October 1, 2015*) (a) If the court orders a sale  
259 of heirs' property, the sale shall be an open-market sale unless the  
260 court finds that a sale by sealed bids or an auction would be more  
261 economically advantageous and in the best interest of the cotenants as  
262 a group.

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

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

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

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

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

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

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

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

296 Sec. 11. (NEW) (*Effective October 1, 2015*) (a) A real estate broker  
297 appointed under subsection (b) of section 10 of this act to offer heirs'  
298 property for open-market sale shall file a report with the court not later  
299 than seven days after the date of receiving an offer to purchase the  
300 property for at least the value determined under section 6 or 10 of this  
301 act.

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

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

305 (2) The name of each buyer;

306 (3) The proposed purchase price;

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

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

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

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

313 Sec. 12. (NEW) (*Effective October 1, 2015*) In applying and construing  
314 the provisions of sections 1 to 13, inclusive, of this act, consideration  
315 shall be given to the need to promote uniformity of the law with  
316 respect to its subject matter among states that enact such uniform

317 provisions.

318 Sec. 13. (NEW) (*Effective October 1, 2015*) The provisions of sections 1  
 319 to 12, inclusive, of this act, modify, limit and supersede the Electronic  
 320 Signatures in Global and National Commerce Act, 15 USC Section 7001  
 321 et seq., but do not modify, limit or supersede Section 101(c) of said act,  
 322 15 USC Section 7001(c), or authorize electronic delivery of any of the  
 323 notices described in Section 103(b) of said act, 15 USC Section 7003(b).

324 Sec. 14. Subsection (a) of section 45a-326 of the general statutes is  
 325 repealed and the following is substituted in lieu thereof (*Effective*  
 326 *October 1, 2015*):

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section
Sec. 4	<i>October 1, 2015</i>	New section
Sec. 5	<i>October 1, 2015</i>	New section
Sec. 6	<i>October 1, 2015</i>	New section
Sec. 7	<i>October 1, 2015</i>	New section
Sec. 8	<i>October 1, 2015</i>	New section
Sec. 9	<i>October 1, 2015</i>	New section
Sec. 10	<i>October 1, 2015</i>	New section
Sec. 11	<i>October 1, 2015</i>	New section
Sec. 12	<i>October 1, 2015</i>	New section
Sec. 13	<i>October 1, 2015</i>	New section

Sec. 14	October 1, 2015	45a-326(a)
---------	-----------------	------------

**JUD**      *Joint Favorable Subst.*

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 governing certain actions to partition real property that is owned by multiple parties as tenants in common and allows certain parties to bring a partition action in probate or Superior Court. The number of actions is not anticipated to be large enough to need additional resources. The court system disposes of over 500,000 cases annually.

**The Out Years****State Impact:** None**Municipal Impact:** None

**OLR Bill Analysis****sSB 900*****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. The bill's 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, 2015.

EFFECTIVE DATE: October 1, 2015

---

**§ 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 that governs partition in a record (which include electronic documents) binding all cotenants;
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.

For purposes of the bill's provisions, "relatives" include those in an individual's direct 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 on or after October 1, 2015, 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 otherwise in a record.

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

If the property is not heirs' property, the court must follow existing law for a partition action (see BACKGROUND).

---

**§ 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 valuation method all cotenants agree 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 must 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 must notify, 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 the property's fair market value is determined. After such a request, the court must send 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 a 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 as shown in the following example. 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 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, (4) state any amounts to be paid to lienholders; (5) describe contractual and other arrangements or conditions of the broker's commission; and (6) 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 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 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 43 Nay 0 (04/06/2015)