



General Assembly

Substitute Bill No. 900

January Session, 2015



**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.

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|---|------------------------|-------------|
| 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 |

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|---------|------------------------|-------------|
| 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 | <i>October 1, 2015</i> | 45a-326(a) |

JUD *Joint Favorable Subst.*