

ASSEMBLY, No. 5510

STATE OF NEW JERSEY 219th LEGISLATURE

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Sponsored by:

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SYNOPSIS

“Uniform Partition of Heirs Property Act”; provides alternative process for handling partition actions filed in court concerning real property with multiple owners, at least one of whom had acquired title from relative.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2021)

1 AN ACT concerning partition actions involving certain real property
2 and supplementing chapter 56 of Title 2A of the New Jersey
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the “Uniform
9 Partition of Heirs Property Act.”

10

11 2. As used in this act:

12 “Ascendant” means an individual who precedes another individual
13 in lineage, in the direct line of ascent from the other individual.

14 “Collateral” means an individual who is related to another
15 individual under the law of intestate succession of this state but who is
16 not the other individual’s ascendant or descendant.

17 “Descendant” means an individual who follows another individual
18 in lineage, in the direct line of descent from the other individual.

19 “Determination of value” means a court order determining the fair
20 market value of heirs property under section 6 or 10 of this act or
21 adopting the valuation of the property agreed to by all cotenants.

22 “Heirs property” means real property held in tenancy in common
23 which satisfies all of the following requirements as of the filing of a
24 partition action: (1) there is no agreement in a record binding all the
25 cotenants which governs the partition of the property; (2) one or more
26 of the cotenants acquired title from a relative, whether living or
27 deceased; and (3) any of the following applies: (a) 20 percent or more
28 of the interests are held by cotenants who are relatives; (b) 20 percent
29 or more of the interests are held by an individual who acquired title
30 from a relative, whether living or deceased; or (c) 20 percent or more
31 of the cotenants are relatives.

32 “Partition by sale” means a court-ordered sale of the entire heirs
33 property, whether by auction, sealed bids, or open-market sale
34 conducted under section 10 of this act.

35 “Partition in kind” means the division of heirs property into
36 physically distinct and separately titled parcels.

37 “Record” means information that is inscribed on a tangible
38 medium or that is stored in an electronic or other medium and is
39 retrievable in perceivable form.

40 “Relative” means an ascendant, descendant, or collateral or an
41 individual otherwise related to another individual by blood, marriage,
42 adoption, or law of this State other than this act.

43

44 3. a. In an action to partition real property under N.J.S.2A:56-1 et
45 seq., based on information contained in the complaint, or upon motion
46 of a party to the action or the court’s own motion, the court shall
47 determine whether the property is heirs property. If the court
48 determines that the property is heirs property, the property shall be

1 partitioned under the particular partition process set forth in this act
2 unless all of the cotenants otherwise agree in a record.

3 b. This act is a supplement to N.J.S.2A:56-1 et seq. and if a
4 partition action is governed by this act, it replaces the provisions of
5 N.J.S.2A:56-1 et seq. that are inconsistent with this act.

6
7 4. If the plaintiff in a partition action seeks an order of notice
8 by publication and the court determines that the property may be
9 heirs property, the plaintiff, not later than 10 days after the court's
10 determination, shall post and maintain while the action is pending a
11 conspicuous sign on the property that is the subject of the action.
12 The sign shall state that a partition action has commenced and
13 identify the name and address of the court and the common
14 designation by which the property is known. The court may require
15 the plaintiff to publish on the sign the name of the plaintiff and the
16 known defendants.

17
18 5. If the court appoints a commissioner or commissioners
19 pursuant to N.J.S.2A:56-1 et seq., each commissioner, in addition to
20 the requirements set forth in N.J.S.2A:56-1 et seq. or court order
21 making the one or more appointments, shall be disinterested,
22 impartial, and not a party to or a participant in the partition action.

23
24 6. a. (1) Except as otherwise provided in subsections b. and c.
25 of this section, if the court determines that the property involved in
26 a partition action is heirs property, then a determination of the
27 property's fair market value, assuming sole ownership of the fee
28 simple estate, shall be made by a disinterested real estate appraiser
29 licensed in this State. On completion of the appraisal, the appraiser
30 shall file a sworn or verified appraisal with the court.

31 (2) After an appraisal is conducted and filed, the court shall
32 send notice to each party as required by the practice of the court,
33 which includes: the appraised fair market value of the property;
34 information concerning an opportunity to review the appraisal on
35 file with the court; and information for filing an objection to the
36 appraisal, stating grounds for the objection, within a timeframe
37 established by the court.

38 (3) Following notice to each party, the court shall conduct an
39 appraisal hearing to determine the fair market value of the property,
40 whether or not any objection to the appraisal is filed. In addition to
41 the court-ordered appraisal, the court may consider any other
42 evidence of value offered by a party. The final determination of the
43 property's fair market value shall be noticed to each party prior to
44 proceeding further on the merits of a partition action.

45 b. If the court determines that the evidentiary value of an
46 appraisal is outweighed by the cost of the appraisal, the court, after
47 an evidentiary hearing, shall determine the fair market value of the
48 property and send notice to the parties of the value.

1 c. If all cotenants have agreed to the value of the property or to
2 another method of valuation, the court may accept that value or the
3 value produced by the agreed method of valuation.

4

5 7. a. If any cotenant requests partition by sale, after the
6 determination of value under section 6 of this act, the party filing
7 the partition action shall send notice to the parties that any cotenant,
8 except a cotenant that requested partition by sale, may buy all of the
9 interests of the cotenants that requested partition by sale.

10 b. Not later than a date set by the court after the notice is sent
11 under subsection a. of this section, any cotenant except a cotenant
12 that requested partition by sale may give notice to the court that it
13 elects to buy all of the interests of the cotenants that requested
14 partition by sale.

15 c. The purchase price for each of the interests of a cotenant that
16 requested partition by sale is the value of the entire parcel
17 determined under section 6 of this act multiplied by the cotenant's
18 fractional ownership of the entire parcel.

19 d. After expiration of the buyout notice period set by the court
20 in subsection b. of this section, the following shall apply:

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

24 (2) If more than one cotenant elects to buy all the interests of
25 the cotenants that requested partition by sale, the court, by order,
26 shall allocate the right to buy those interests among the electing
27 cotenants based on each electing cotenant's existing fractional
28 ownership of the entire parcel divided by the total existing
29 fractional ownership of all cotenants electing to buy, and send
30 notice to all the parties of that fact and of the price to be paid by
31 each electing cotenant.

32 (3) If no cotenant elects to buy all the interests of the cotenants
33 that requested partition by sale, the court shall send notice to all the
34 parties of that fact and resolve the partition action, by order, in
35 accordance with subsections a. and b. of section 8 of this act.

36 e. If the court sends notice to the parties under paragraph (1) or
37 (2) of subsection d. of this section, the court shall set a subsequent
38 date by which electing cotenants shall be required to pay their
39 apportioned price into the court. After this date, the following shall
40 apply:

41 (1) If all electing cotenants timely pay their apportioned price
42 into court, the court shall issue an order reallocating all the interests
43 of the cotenants and disburse the amounts held by the court to the
44 persons entitled to them.

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

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

5 f. On a date determined by the court following the notice
6 provided by the court pursuant to paragraph (3) of subsection e. of
7 this section, any cotenant that paid may elect to purchase all of the
8 remaining interest by paying the entire price into the court. After
9 this date, the following shall apply:

10 (1) If only one cotenant pays the entire price for the remaining
11 interests, the court shall issue an order reallocating the remaining
12 interest to that cotenant and disburse the amounts held by it to the
13 persons entitled to them.

14 (2) If no cotenant pays the entire price for the remaining
15 interests, the court shall resolve the partition action under
16 subsection a. and b. of section 8 of this act as if the interests of the
17 cotenants that requested partition by sale were not purchased.

18 (3) If more than one cotenant pays the entire price for the
19 remaining interests, the court shall reapportion the remaining
20 interests among those paying cotenants, based on each paying
21 cotenant's original fractional ownership of the entire parcel divided
22 by the total original fractional ownership of all cotenants that paid
23 the entire price for the remaining interests. The court shall issue an
24 order reallocating all of the cotenants' interests, disburse the
25 amounts held by it to the persons entitled to them, and refund any
26 excess payment held by the court.

27 g. Not later than a date determined by the court after notices
28 have been sent to the parties pursuant to subsection a. of this
29 section, any cotenant entitled to buy an interest under this section
30 may request the court to authorize the sale as part of the pending
31 action of the interests of cotenants named as defendants and served
32 with the complaint but that did not appear in the action.

33 h. If the court receives a timely request under subsection g. of
34 this section, the court, after hearing, may deny the request or
35 authorize the requested additional sale on terms as the court
36 determines are fair and reasonable, subject to the following
37 limitations:

38 (1) A sale authorized under this subsection may occur only after
39 the purchase prices for all interests subject to sale under subsections
40 a. through f. of this section have been paid into court and those
41 interests have been reallocated among the cotenants as provided in
42 those subsections; and

43 (2) The purchase price for the interest of a non-appearing
44 cotenant is based on the court's determination of value under
45 section 6 of this act.

1 8. a. If all the interests of all cotenants that requested partition
2 by sale are not purchased by other cotenants pursuant to section 7 of
3 this act, or if after conclusion of the buyout period under that
4 section, a cotenant remains that has requested partition in kind, the
5 court shall order partition in kind unless the court, after
6 consideration of the factors listed in section 9 of this act, finds that
7 partition in kind will result in great prejudice to the cotenants as a
8 group. In considering whether to order partition in kind, the court
9 shall approve a request by two or more parties to have their
10 individual interests aggregated.

11 b. If the court does not order partition in kind under subsection
12 a. of this section, the court shall order partition by sale pursuant to
13 section 10 of this act or, if no cotenant requested partition by sale,
14 the court shall dismiss the action.

15 c. If the court orders partition in kind pursuant to subsection a.
16 of this section, the court may require that one or more cotenants pay
17 one or more other cotenants amounts so that the payments, taken
18 together with the value of the in-kind distributions to the cotenants,
19 make the partition in kind just and proportionate in value to the
20 fractional interests held.

21 d. If the court orders partition in kind pursuant to subsection a.
22 of this section, the court shall allocate to the cotenants that are
23 unknown, un-locatable, or the subject of a default judgment, if their
24 interests were not bought out pursuant to section 7 of this act, a part
25 of the property representing the combined interests of these
26 cotenants as determined by the court.

27
28 9. a. In determining under subsection a. of section 8 of this act
29 whether partition in kind would result in great prejudice to the
30 cotenants as a group, the court shall consider the following:

31 (1) Whether the heirs property practicably can be divided among
32 the cotenants;

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

38 (3) Evidence of the collective duration of ownership or
39 possession of the property by a cotenant and one or more
40 predecessors in title or predecessors in possession to the cotenant
41 who are or were relatives of the cotenant or each other;

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

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

1 (6) The degree to which the cotenants have contributed their pro
2 rata share of the property taxes, insurance, and other expenses
3 associated with maintaining ownership of the property or have
4 contributed to the physical improvement, maintenance, or upkeep of
5 the property; and

6 (7) any other relevant factor as determined by the court.

7 b. The court may not consider any one factor in subsection a.
8 of this section to be dispositive without weighing the totality of all
9 relevant factors and circumstances.

10

11 10. a. If the court orders a sale of heirs property, the sale shall
12 be an open-market sale unless the court finds that a sale by sealed
13 bids or an auction would be more economically advantageous and
14 in the best interest of the cotenants as a group.

15 b. If the court orders an open-market sale and the parties, not
16 later than a date set by the court after the entry of the order, agree
17 on a real estate broker licensed in this State to offer the property for
18 sale, the court shall appoint the broker and establish a reasonable
19 commission. If the parties do not agree on a broker, the court shall
20 appoint a disinterested real estate broker licensed in this State to
21 offer the property for sale and shall establish a reasonable
22 commission. The broker shall offer the property for sale in a
23 commercially reasonable manner at a price no lower than its
24 determination of value pursuant to section 6 of this act and on the
25 terms and conditions established by the court.

26 c. If the broker appointed under subsection b. of this section
27 obtains, within a reasonable time, an offer to purchase the property
28 for at least the determination of value:

29 (1) The broker shall comply with the reporting requirements in
30 section 11 of this act; and

31 (2) The sale may be completed in accordance with State law
32 other than this act.

33 d. If the broker appointed under subsection b. of this section
34 does not obtain, within a reasonable time, an offer to purchase the
35 property for at least the determination of value, the court, after
36 hearing, may:

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

38 (2) Re-determine the value of the property and order that the
39 property continue to be offered for an additional time; or

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

42 e. If the court orders a sale by sealed bids or an auction, the
43 court shall set terms and conditions of the sale.

44 f. If a purchaser is entitled to a share of the proceeds of the
45 sale, the purchaser is entitled to a credit against the price in an
46 amount equal to the purchaser's share of the proceeds.

1 11. a. Unless otherwise required to do so within a shorter time,
2 a broker appointed under subsection b. of section 10 of this act to
3 offer heirs property by open-market sale shall file a report with the
4 court not later than seven days after receiving an offer to purchase
5 the property for at least the value determined under section 6 or 10
6 of this act.

7 b. The report required by subsection a. of this section shall
8 contain the following information:

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

10 (2) The name of each buyer;

11 (3) The proposed purchase price;

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

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

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

17 (7) Any other material facts relevant to the sale.
18

19 12. This act modifies, limits, and supersedes the federal
20 "Electronic Signatures in Global and National Commerce Act," 15
21 U.S.C. section 7001 et seq., but does not modify, limit, or supersede
22 section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize
23 electronic delivery of any of the notices described in section 103(b)
24 of that act, 15 U.S.C. section 7003(b).
25

26 13. This act shall take effect immediately, and apply to any
27 partition actions filed on or after that date.
28
29

30 STATEMENT

31
32 This bill, titled the "Uniform Partition of Heirs Property Act,"
33 would provide an alternative process for handling partition actions
34 filed in court concerning real property with multiple owners, at least
35 one of whom had acquired title to the property from a relative. The
36 bill is based on the 2010 uniform act of the same name drafted and
37 approved by the Uniform Law Commission (formerly known as the
38 National Conference of Commissioners on Uniform State Laws).

39 Any real property held by multiple owners as tenants in common
40 (cotenants) may be subject to a partition action filed in Superior
41 Court, which may result in (1) a partition in kind, the physical
42 division of the property proportionate to individual owners'
43 interests, or (2) partition by sale, for which individual owners are
44 then compensated out of the total purchase price proportionate to
45 their interests. See N.J.S.2A:56-1 et seq. This bill would add new
46 requirements to the partition process intended to more greatly
47 protect the interests of cotenant property owners who may object to
48 another owner's action seeking to partition any property which

1 meets the following characteristics and is referred to in the bill as
2 “heirs property”:

3 - there is no agreement in a record binding all the cotenants which
4 governs the partition of the property;

5 - one or more of the cotenants acquired title from a relative,
6 whether living or deceased; and

7 - any one of the following applies: 20 percent or more of the
8 interests are held by cotenants who are relatives; 20 percent or more of
9 the interests are held by an individual who acquired title from a
10 relative, whether living or deceased; or 20 percent or more of the
11 cotenants are relatives.

12 When a partition action is filed pursuant to the partition law,
13 N.J.S.2A:56-1 et seq., the court would make a determination, based
14 on information contained in the partition complaint, or upon motion
15 of a party to the action or the court’s own motion, whether the
16 subject property is “heirs property.” If it is, the property would be
17 partitioned in accordance with the process set forth in the bill.

18 The bill would require a disinterested real estate appraiser
19 licensed in the State to make a determination of the property’s fair
20 market value, assuming sole ownership of the fee simple estate,
21 unless the evidentiary value of an appraisal would be outweighed by
22 the appraisal’s cost (in which case the court would determine fair
23 market value), or the cotenants agreed to the property’s value or to
24 another valuation method. If conducted, the completed appraisal
25 would be filed with the court.

26 If any cotenant requests a partition by sale, after the
27 determination of the property’s value, a notice would be sent to all
28 parties that any cotenant, except a cotenant that requested partition
29 by sale, could buy all of the interests of the one or more cotenants
30 requesting partition by sale. Any cotenant could then elect to buy
31 all of those interests by giving notice to the court. The purchase
32 price for each of the interests would be the value of the entire parcel
33 of property multiplied by the cotenant’s fractional ownership of the
34 entire parcel. The court would establish a date by which all
35 cotenants electing to purchase interests would have to pay their
36 apportioned price into the court, after which the property interests
37 would be reallocated amongst the remaining cotenants and the
38 money held by the court disbursed to the one or more cotenants who
39 have been bought-out.

40 At the conclusion of the buyout period, if all of the interests of
41 the one or more cotenants that requested partition by sale are not
42 purchased by other cotenants, or any cotenant remains that
43 requested a partition in kind, the court would order the partitioning
44 of the property into physically distinct and separately titled parcels,
45 unless the court found that such partitioning would result in great
46 prejudice to the cotenants as a group; the determination of “great
47 prejudice” would be based on such factors as whether the property
48 could be divided practicably amongst cotenants, whether doing so

1 could decrease the aggregate values of the resulting parcels versus
2 selling the property as a whole, and any cotenant's sentimental
3 attachment to the property, including attachment arising because of
4 any ancestral, unique, or special value to the cotenant. In such a
5 case, the court would then order a partition by sale, unless no
6 cotenant requested such action, resulting in the dismissal of the case
7 and no further partitioning of the property.

8 Any partition by sale would be an open-market sale unless the
9 court finds that a sale by sealed bids or an auction would be more
10 economically advantageous and in the best interest of the cotenants
11 as a group. Any open-market sale would proceed under a licensed
12 real estate broker, either agreed to by the parties or, absent
13 agreement, appointed by the court. The real estate broker would be
14 provided a reasonable commission on the sale as determined by the
15 court.

16 The broker would offer the property for sale in a commercially
17 reasonable manner at a price no lower than the previously
18 determined value of the property, and on the terms and conditions
19 established by the court. The broker, after receiving an offer to
20 purchase the property, would file a report with the court containing
21 information about the purchase price, name of each buyer, terms of
22 the proposed sale, including the terms of any financing, any
23 amounts to be paid to lienholders, and other material facts relevant
24 to the sale. Thereafter, the purchase could be completed in
25 accordance with applicable State law and payments distributed
26 based upon the former cotenants various interests in the property.