

1 SB162
2 155634-4
3 By Senators Fielding, Marsh, Whatley, Allen, Smitherman,
4 Bedford, Figures, Irons, Blackwell, Glover, Scofield, Reed,
5 Holley, Ward, Taylor, Williams, Hightower, Brewbaker, Dial,
6 and Pittman
7 RFD: Judiciary
8 First Read: 14-JAN-14

1 SB162

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3
4 ENROLLED, An Act,

5 To create the Alabama Uniform Partition of Heirs
6 Property Act.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 Section 2. For the purposes of this act, the
11 following terms shall have the following meanings:

12 (1) ASCENDANT. An individual who precedes another
13 individual in lineage, in the direct line of ascent from the
14 other individual.

15 (2) COLLATERAL. An individual who could inherit
16 from, or whose estate could descend to, the related individual
17 under the law of intestate succession of Alabama but who is
18 not the other individual's ascendant or descendant.

19 (3) DESCENDANT. An individual who follows another
20 individual in lineage, in the direct line of descent from the
21 other individual.

22 (4) DETERMINATION OF VALUE. A court order
23 determining the fair market value of heirs property under
24 Section 6 or Section 10 or adopting the valuation of the
25 property agreed to by all cotenants.

1 (5) HEIRS PROPERTY. Real property held in tenancy in
2 common which satisfies all of the following requirements as of
3 the filing of a partition action:

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

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

8 (C) Any of the following applies:

9 (i) Twenty percent or more of the interests are held
10 by cotenants who are relatives;

11 (ii) Twenty percent or more of the interests are
12 held by an individual who acquired title from a relative,
13 whether living or deceased; or

14 (iii) Twenty percent or more of the cotenants are
15 relatives.

16 (6) PARTITION BY SALE. A court-ordered sale of the
17 entire heirs property, whether by auction, sealed bids, or
18 open market sale conducted under Section 10.

19 (7) PARTITION IN KIND. The division of heirs
20 property into physically distinct and separately titled
21 parcels.

22 (8) RECORD. Information that is inscribed on a
23 tangible medium or that is stored in an electronic or other
24 medium and is retrievable in perceivable form.

1 (9) RELATIVE. An ascendant, descendant, or
2 collateral or an individual otherwise related to another
3 individual by blood, marriage, adoption, or law of this state
4 other than this act.

5 Section 3. (a) This act applies to partition actions
6 filed on or after January 1, 2015.

7 (b) In an action to partition real property under
8 Chapter 6 of Title 35, Code of Alabama 1975, the court shall
9 determine whether the property is heirs property. If the court
10 determines that the property is heirs property, the property
11 shall be partitioned under this act unless all of the
12 cotenants otherwise agree in a record.

13 (c) This act supplements Chapter 6 of Title 35, Code
14 of Alabama 1975, and, if an action is governed by this act,
15 replaces those provisions of Chapter 6 of Title 35, Code of
16 Alabama 1975, that are inconsistent with this act.

17 (d) This act does not supplant or otherwise change
18 the provisions for fees as a part of the cost under Section
19 34-3-60, Code of Alabama 1975.

20 Section 4. (a) Service of process shall be in
21 accordance with Section 35-6-20 and Section 35-6-25, Code of
22 Alabama 1975.

23 (b) When service of process is obtained by
24 publication and the court determines that the property may be
25 heirs property, the plaintiff, not later than 10 days after

1 the court's determination, shall post a conspicuous and
2 durable sign of at least 11 x 17 inches in size on the
3 property that is the subject of the action. The sign shall
4 state that the action has commenced and identify the name and
5 address of the court and the common designation by which the
6 property is known. The court may require the plaintiff to
7 publish on the sign the name of the plaintiff and the known
8 defendants.

9 Section 5. If the court appoints commissioners
10 pursuant to Section 35-6-45 and Section 35-6-62, Code of
11 Alabama 1975, each commissioner, in addition to the
12 requirements and disqualifications applicable to commissioners
13 in Sections 35-6-45, 35-6-46, and 35-6-62, shall be
14 disinterested and impartial and not a party to or a
15 participant in the action.

16 Section 6. (a) Except as otherwise provided in
17 subsection (b) and subsection (c), if the court determines
18 that the property that is the subject of a partition action is
19 heirs property, the court shall determine the fair market
20 value of the property by ordering an appraisal pursuant to
21 subsection (d).

22 (b) If all cotenants have agreed to the value of the
23 property or to another method of valuation, the court shall
24 adopt that value or the value produced by the agreed method of
25 valuation.

1 (c) If the court determines that the evidentiary
2 value of an appraisal is outweighed by the cost of the
3 appraisal, the court, after an evidentiary hearing, shall
4 determine the fair market value of the property and send
5 notice to the parties of the value.

6 (d) If the court orders an appraisal, the court
7 shall appoint a disinterested real estate appraiser licensed
8 in this state to determine the fair market value of the
9 property assuming sole ownership of the fee simple estate. On
10 completion of the appraisal, the appraiser shall file a sworn
11 or verified appraisal with the court.

12 (e) If an appraisal is conducted pursuant to
13 subsection (d), not later than 10 days after the appraisal is
14 filed, the court shall send notice to each party with a known
15 address, stating all of the following:

16 (1) The appraised fair market value of the property.

17 (2) That the appraisal is available at the clerk's
18 office.

19 (3) That a party may file with the court an
20 objection to the appraisal not later than 30 days after the
21 notice is sent, stating the grounds for the objection.

22 (f) If an appraisal is filed with the court pursuant
23 to subsection (d), the court shall conduct a hearing to
24 determine the fair market value of the property not sooner
25 than 30 days after a copy of the notice of the appraisal is

1 sent to each party under subsection (e), whether or not an
2 objection to the appraisal is filed under subdivision (3) of
3 subsection (e). In addition to the court-ordered appraisal,
4 the court may consider any other evidence of value offered by
5 a party.

6 (g) After a hearing under subsection (f), but before
7 considering the merits of the partition action, the court
8 shall determine the fair market value of the property and send
9 notice to the parties of the value.

10 Section 7. (a) In each petitioner's initial pleading
11 in a partition action, the petitioner shall state whether the
12 petitioner requests partition by sale. If the petitioner fails
13 to so state, the petitioner shall be deemed to have not
14 requested partition by sale.

15 (b) In each cotenant's initial responsive pleading,
16 the cotenant shall state whether the cotenant requests
17 partition by sale.

18 (1) If a cotenant files a responsive pleading but
19 fails to so state, the cotenant shall be deemed to have not
20 requested partition by sale.

21 (2) If a guardian ad litem is appointed to represent
22 one or more cotenants including, but not limited to, unknown,
23 unlocatable, and legally incapacitated cotenants, the guardian
24 ad litem may, but is not required to, state whether or not
25 such cotenant requests partition by sale, and the guardian ad

1 litem shall have no liability for making or failing to make
2 the election. If a guardian ad litem files a responsive
3 pleading but fails to so state, such cotenant shall be deemed
4 to have not requested partition by sale.

5 (c) If a cotenant is named as a defendant and served
6 with the complaint but does not appear in the action, the
7 cotenant shall be deemed to have not requested partition by
8 sale, unless the court approves a request to authorize the
9 sale of the cotenant's interest as set forth in subdivisions
10 (1) to (3), inclusive.

11 (1) Not later than 14 days after the court sends
12 notice to the parties pursuant to subsection (e) or
13 subdivision (1) of subsection (f), any cotenant entitled to
14 buy an interest under this section may request the court to
15 authorize the sale pursuant to this section of the interests
16 of cotenants named as defendants and served with the complaint
17 but not appearing in the action.

18 (2) If the court receives a timely request under
19 subdivision (1), the court, after a hearing, may deny the
20 request or may authorize the requested sale of the interests
21 of any or all cotenants named as defendants and served with
22 the complaint who did not appear in the action.

23 (3) If the court approves the request made pursuant
24 to subdivision (1) with respect to any cotenant who was named
25 as a defendant and served with the complaint but did not

1 appear in the action, that cotenant shall be deemed to have
2 requested partition by sale for purposes of this section, and
3 shall be treated for all purposes hereunder as having
4 requested partition by sale.

5 (d) If no cotenant, including the petitioner, has
6 requested partition by sale, the court shall determine whether
7 the property can be partitioned in kind pursuant to
8 subsections (a), (c), and (d) of Section 8 and Section 9. If
9 the court determines the property cannot be partitioned in
10 kind, the court shall dismiss the action without prejudice.

11 (e) If any cotenant, including the petitioner, has
12 requested partition by sale, after the determination of value
13 under Section 6, the court shall send notice to the parties
14 that any cotenant except a cotenant that requested partition
15 by sale may buy all the interests of the cotenants that
16 requested partition by sale.

17 (1) Not later than 30 days after the notice is sent,
18 any cotenant except a cotenant that requested partition by
19 sale may give notice to the court that it elects to buy all
20 the interests of the cotenants that requested partition by
21 sale.

22 (2) The purchase price for the interests of a
23 cotenant that requested partition by sale shall be the value
24 of the entire parcel determined under Section 6 multiplied by
25 the cotenant's fractional ownership of the entire parcel.

1 (3) After expiration of the period in subdivision
2 (1), if only one cotenant elects to buy all the interests of
3 the cotenants that requested partition by sale, the court
4 shall notify all the parties of that fact and of the price to
5 be paid by the electing cotenant calculated pursuant to
6 subdivision (2). If more than one cotenant elects to buy all
7 the interests of the cotenants that requested partition by
8 sale, the court shall allocate the right to buy those
9 interests among the electing cotenants based on each electing
10 cotenant's existing fractional ownership of the entire parcel
11 divided by the total existing fractional ownership of all
12 cotenants electing to buy and send notice to all the parties
13 of that fact and of the price to be paid by each electing
14 cotenant calculated pursuant to subdivision (2).

15 (4) The court shall set a date, not sooner than 60
16 days after the end of the applicable notice period in
17 subdivision (1), by which electing cotenants must pay their
18 apportioned price into the court.

19 (A) If all electing cotenants timely pay their
20 apportioned price into court, the court shall issue an order
21 reallocating all the interests of the cotenants and disburse
22 the amounts held by the court to the persons entitled to them,
23 and the court shall thereafter enter such other orders as may
24 be appropriate and dismiss the action without prejudice.

1 (B) If one or more but not all of the electing
2 cotenants fail to pay their apportioned price on time, the
3 court shall give notice to the electing cotenants that paid
4 their apportioned price of the remaining interests of the
5 cotenants that requested partition by sale and the total price
6 for those interests.

7 (C) If no electing cotenant timely pays its
8 apportioned price, the court shall proceed according to
9 subsection (f) as if the interests of the cotenants that
10 requested partition by sale were not purchased pursuant to
11 this subsection.

12 (5) Not later than 20 days after the court gives
13 notice pursuant to paragraph (B) of subdivision (4), any
14 cotenant that paid may elect to purchase all of the remaining
15 interests of the cotenants that requested partition by sale by
16 paying the entire price into the court.

17 (A) If only one cotenant timely pays the entire
18 price for the remaining interests of the cotenants that
19 requested partition by sale, the court shall issue an order
20 reallocating the remaining interests of the cotenants that
21 requested partition by sale to that cotenant. The court shall
22 issue promptly an order reallocating the interests of all of
23 the cotenants and disburse the amounts held by it to the
24 persons entitled to them.

1 (B) If more than one cotenant timely pays the entire
2 price for the remaining interests of the cotenants that
3 requested partition by sale, the court shall reapportion the
4 remaining interests of the cotenants that requested partition
5 by sale among those paying cotenants, based on each paying
6 cotenant's original fractional ownership of the entire parcel
7 divided by the total original fractional ownership of all
8 cotenants that paid the entire price for the remaining
9 interests of the cotenants that requested partition by sale.
10 The court shall issue promptly an order reallocating all of
11 the cotenants' interests, disburse the amounts held by it to
12 the persons entitled to them, and promptly refund any excess
13 payment held by the court.

14 (C) If no cotenant pays the entire price for the
15 remaining interests of the cotenants that requested partition
16 by sale, the court shall proceed according to subsection (f)
17 as if the interests of the cotenants that requested partition
18 by sale were not purchased pursuant to subsection (f).

19 (f) If no cotenant elects pursuant to subsection (e)
20 to buy all the interests of the cotenants that requested
21 partition by sale, the court shall proceed as follows:

22 (1) The court shall send notice to the parties that
23 no cotenant elected pursuant to subsection (e) to buy all the
24 interests of the cotenants that requested partition by sale
25 and that any cotenant that requested partition by sale may buy

1 all the interests of the other cotenants that requested
2 partition by sale.

3 (2) Not later than 30 days after the notice is sent
4 under subdivision (1), any cotenant that requested partition
5 by sale may give notice to the court that it elects to buy all
6 the interests of the other cotenants that requested partition
7 by sale.

8 (3) Notwithstanding the cotenant's prior request for
9 partition by sale, any cotenant making an election to buy
10 pursuant to this subdivision, for purposes of this subsection,
11 shall be deemed to have not requested partition by sale.

12 (4) The purchase price for the interest of a
13 cotenant that requested partition by sale shall be the value
14 of the entire parcel determined under Section 6 multiplied by
15 the cotenant's fractional ownership of the entire parcel.

16 (5) If only one cotenant elects to buy all the
17 interests of the other cotenants that requested partition by
18 sale, the court shall notify all the parties of that fact and
19 of the price to be paid by the electing cotenant calculated
20 pursuant to subdivision (4). If more than one cotenant elects
21 to buy all the interests of the other cotenants that requested
22 partition by sale, the court shall allocate the right to buy
23 those interests among the electing cotenants based on each
24 electing cotenant's existing fractional ownership of the
25 entire parcel divided by the total existing fractional

1 ownership of all cotenants electing to buy and send notice to
2 all the parties of that fact and of the price to be paid by
3 each electing cotenant calculated pursuant to subdivision (4).

4 (6) The court shall set a date, not sooner than 60
5 days after the end of the applicable notice period in
6 subdivision (1), by which electing cotenants must pay their
7 apportioned price into the court.

8 (A) If all electing cotenants timely pay their
9 apportioned price into court, the court shall issue an order
10 reallocating all the interests of the cotenants and disburse
11 the amounts held by the court to the persons entitled to them,
12 and the court shall thereafter enter such other orders as may
13 be appropriate and dismiss the action without prejudice.

14 (B) If one or more but not all of the electing
15 cotenants fail to pay their apportioned price on time, the
16 court shall give notice to the electing cotenants that paid
17 their apportioned price of the remaining interests of the
18 cotenants that requested partition by sale and the total price
19 for those interests.

20 (C) If no electing cotenant timely pays its
21 apportioned price, the court shall resolve the partition
22 action under Section 8 to Section 11, inclusive, as if the
23 interests of the cotenants that requested partition by sale
24 were not purchased.

1 (7) Not later than 20 days after the court gives
2 notice pursuant to paragraph (B) of subdivision (6), any
3 cotenant that paid may elect to purchase all of the remaining
4 interests of the cotenants that requested partition by sale by
5 paying the entire price into the court.

6 (A) If only one cotenant timely pays the entire
7 price for the remaining interests of the cotenants that
8 requested partition by sale, the court shall issue an order
9 reallocating the remaining interests of the cotenants that
10 requested partition by sale to that cotenant. The court shall
11 issue promptly an order reallocating the interests of all of
12 the cotenants and disburse the amounts held by it to the
13 persons entitled to them.

14 (B) If more than one cotenant timely pays the entire
15 price for the remaining interests of the cotenants that
16 requested partition by sale, the court shall reapportion the
17 remaining interests of the cotenants that requested partition
18 by sale among those paying cotenants, based on each paying
19 cotenant's original fractional ownership of the entire parcel
20 divided by the total original fractional ownership of all
21 cotenants that paid the entire price for the remaining
22 interests of the cotenants that requested partition by sale.
23 The court shall issue promptly an order reallocating all of
24 the cotenants' interests, disburse the amounts held by it to

1 the persons entitled to them, and promptly refund any excess
2 payment held by the court.

3 (C) If no electing cotenant pays the entire price
4 for the remaining interests of the cotenants that requested
5 partition by sale, the court shall resolve the partition
6 action under Section 8 to Section 11, inclusive, as if the
7 interests of the cotenants that requested partition by sale
8 were not purchased.

9 (8) If no cotenant elects to buy all the interests
10 of the other cotenants that requested partition by sale, the
11 court shall send notice to all the parties of that fact and
12 resolve the partition action under Section 8 to Section 11,
13 inclusive.

14 Section 8. (a) If all the interests of all cotenants
15 that requested partition by sale are not purchased by other
16 cotenants pursuant to Section 7, or, if after conclusion of
17 the buyout under Section 7, a cotenant remains that has
18 requested partition in kind, the court shall order partition
19 in kind unless the court, after consideration of the factors
20 listed in Section 9, finds that partition in kind will result
21 in great prejudice to the cotenants. In considering whether to
22 order partition in kind, the court shall approve a request by
23 two or more parties to have their individual interests
24 aggregated.

1 (b) If the court does not order partition in kind
2 under subsection (a), the court shall order partition by sale
3 pursuant to Section 10 or, if no cotenant requested partition
4 by sale, the court shall dismiss the action.

5 (c) If the court orders partition in kind pursuant
6 to subsection (a), the court may require that one or more
7 cotenants pay one or more other cotenants amounts so that the
8 payments, taken together with the value of the in-kind
9 distributions to the cotenants, will make the partition in
10 kind just and proportionate in value to the fractional
11 interests held.

12 (d) If the court orders partition in kind, the court
13 shall allocate to the cotenants that are unknown, unlocatable,
14 or the subject of a default judgment, if their interests were
15 not bought out pursuant to Section 7, a part of the property
16 or value of the property representing the combined interests
17 of these cotenants as determined by the court.

18 Section 9. (a) In determining under subsection (a)
19 of Section 8 whether partition in kind would result in great
20 prejudice to the cotenants, the court shall consider the
21 following:

22 (1) Whether the heirs property practicably can be
23 divided among the cotenants;

24 (2) Whether partition in kind would apportion the
25 property in such a way that the aggregate fair market value of

1 the parcels resulting from the division would be materially
2 less than the value of the property if it were sold as a
3 whole, taking into account the condition under which a
4 court-ordered sale likely would occur;

5 (3) Evidence of the collective duration of ownership
6 or possession of the property by a cotenant and one or more
7 predecessors in title or predecessors in possession to the
8 cotenant who are or were relatives of the cotenant or each
9 other;

10 (4) A cotenant's sentimental attachment to the
11 property, including any attachment arising because the
12 property has ancestral or other unique or special value to the
13 cotenant;

14 (5) The lawful use being made of the property by a
15 cotenant and the degree to which the cotenant would be harmed
16 if the cotenant could not continue the same use of the
17 property;

18 (6) The degree to which the cotenants have
19 contributed their pro rata share of the property taxes,
20 insurance, and other expenses associated with maintaining
21 ownership of the property or have contributed to the physical
22 improvement, maintenance, or upkeep of the property; and

23 (7) Any other relevant factor.

1 (b) The court may not consider any one factor in
2 subsection (a) to be dispositive without weighing the totality
3 of all relevant factors and circumstances.

4 Section 10. (a) If the court orders a sale of heirs
5 property, the court shall order that the sale be conducted by
6 one or more of the following methods of sale: Open market sale
7 with or without a broker or brokers; by sealed bids; public
8 auction; or private sale. The court shall choose a method
9 which shall be more economically advantageous and in the best
10 interest of the cotenants as a group.

11 (b) If the court orders an open market sale with or
12 without a broker and the parties, not later than 10 days after
13 the entry of the order, agree on a real estate broker or
14 brokers licensed in this state to offer the property for sale,
15 the court shall appoint the broker or brokers and establish
16 terms of the listing agreement. If the parties do not agree on
17 a broker or brokers, the court shall appoint a disinterested
18 real estate broker licensed in this state to offer the
19 property for sale and shall establish reasonable terms. The
20 broker or brokers shall offer the property for sale in a
21 commercially reasonable manner on the terms and conditions
22 established by the court, at a price no lower than the
23 determination of value unless the court orders otherwise for
24 good cause shown.

1 (c) If, in an open market sale, an offer is obtained
2 to purchase the property for at least the determination of
3 value or the amount ordered by the court and within a
4 reasonable time, not to exceed 180 days:

5 (1) The broker or seller shall comply with the
6 reporting requirements in Section 11; and

7 (2) The sale may be completed in accordance with
8 state law.

9 (d) If, in an open market sale, an offer is not
10 obtained to purchase the property within a reasonable time,
11 not to exceed 180 days, for at least the determination of
12 value or the amount ordered by the court, the court after
13 hearing may:

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

15 (2) Order that the property continue to be offered
16 for an additional time, with or without redetermining the
17 value of the property; or

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

20 (e) If the court orders a sale by auction, unless
21 the parties otherwise agree or the court for good cause shown
22 orders otherwise, the auction shall be conducted at the front
23 door or main entrance to the courthouse of the county where
24 the land or a substantial and material part thereof is
25 located. The sale shall be held at a time specified by the

1 court between the legal hours of sale of 11 a.m. to 4 p.m. on
2 the day designated for the exercise of the auction to sell
3 heirs property.

4 (f) If a purchaser is entitled to a share of the net
5 proceeds of the sale, the purchaser is entitled to a credit
6 against the price in an amount equal to the purchaser's share
7 of the proceeds.

8 Section 11. (a) In an open market sale of heirs
9 property, a broker or seller shall file a report with the
10 court not later than seven days after receiving an offer to
11 purchase the property for at least the determination of value
12 or the amount ordered by the court.

13 (b) The report required by subsection (a) shall
14 contain all of the following information:

15 (1) A description of the property to be sold to each
16 buyer.

17 (2) The name of each buyer.

18 (3) The proposed purchase price.

19 (4) The terms and conditions of the proposed sale,
20 including the terms of any owner financing.

21 (5) The amounts to be paid to lien holders.

22 (6) A statement of contractual or other arrangements
23 or conditions of the broker's commission.

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

1 Section 12. A partition, sale or other disposition
2 of property pursuant to this act shall not affect or displace
3 a mortgage or other lien on the property, and shall not affect
4 or displace the obligations of any person who is a party to
5 the mortgage or other lien or who is obligated on any note or
6 other agreement secured by the mortgage or other lien.

7 Section 13. In applying and construing this uniform
8 act, consideration shall be given to the need to promote
9 uniformity of the law with respect to its subject matter among
10 states that enact the uniform act.

11 Section 14. This act modifies, limits, and
12 supersedes the Electronic Signatures in Global and National
13 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
14 modify, limit, or supersede Section 101(c) of that act, 15
15 U.S.C. Section 7001(c), or authorize electronic delivery of
16 any of the notices described in Section 103(b) of that act, 15
17 U.S.C. Section 7003(b).

18 Section 15. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law, for partition actions
21 filed on or after January 1, 2015.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB162

Senate 28-JAN-14

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 01-APR-14

By: Senator Fielding