

SENATE, No. 1869

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

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.



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.

46

47 8. a. If all the interests of all cotenants that requested partition
48 by sale are not purchased by other cotenants pursuant to section 7 of

1 this act, or if after conclusion of the buyout period under that
2 section, a cotenant remains that has requested partition in kind, the
3 court shall order partition in kind unless the court, after
4 consideration of the factors listed in section 9 of this act, finds that
5 partition in kind will result in great prejudice to the cotenants as a
6 group. In considering whether to order partition in kind, the court
7 shall approve a request by two or more parties to have their
8 individual interests aggregated.

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

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

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

25
26 9. a. In determining under subsection a. of section 8 of this act
27 whether partition in kind would result in great prejudice to the
28 cotenants as a group, the court shall consider the following:

29 (1) Whether the heirs property practicably can be divided among
30 the cotenants;

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

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

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

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

46 (6) The degree to which the cotenants have contributed their pro
47 rata share of the property taxes, insurance, and other expenses
48 associated with maintaining ownership of the property or have

1 contributed to the physical improvement, maintenance, or upkeep of
2 the property; and

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

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

7

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

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

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

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

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

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

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

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

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

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

41 f. If a purchaser is entitled to a share of the proceeds of the
42 sale, the purchaser is entitled to a credit against the price in an
43 amount equal to the purchaser's share of the proceeds.

44

45 11. a. Unless otherwise required to do so within a shorter time,
46 a broker appointed under subsection b. of section 10 of this act to
47 offer heirs property by open-market sale shall file a report with the
48 court not later than seven days after receiving an offer to purchase

1 the property for at least the value determined under section 6 or 10
2 of this act.

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

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

6 (2) The name of each buyer;

7 (3) The proposed purchase price;

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

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

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

13 (7) Any other material facts relevant to the sale.
14

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

22 13. This act shall take effect immediately, and apply to any
23 partition actions filed on or after that date.
24

25

26 STATEMENT

27

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

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

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

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

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

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

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

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

36 At the conclusion of the buyout period, if all of the interests of
37 the one or more cotenants that requested partition by sale are not
38 purchased by other cotenants, or any cotenant remains that
39 requested a partition in kind, the court would order the partitioning
40 of the property into physically distinct and separately titled parcels,
41 unless the court found that such partitioning would result in great
42 prejudice to the cotenants as a group; the determination of "great
43 prejudice" would be based on such factors as whether the property
44 could be divided practicably amongst cotenants, whether doing so
45 could decrease the aggregate values of the resulting parcels versus
46 selling the property as a whole, and any cotenant's sentimental
47 attachment to the property, including attachment arising because of
48 any ancestral, unique, or special value to the cotenant. In such a

1 case, the court would then order a partition by sale, unless no
2 cotenant requested such action, resulting in the dismissal of the case
3 and no further partitioning of the property.

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

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