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**THE SENATE OF MARYLAND**  
ANNAPOLIS, MARYLAND 21401

**2/3/2022**

**Judicial Proceedings Committee**  
**Senator William Smith**

**Maryland Senate Bill 92**  
**Uniform Partition of Heirs Property Act**  
**Sponsor Statement**

The Maryland Uniform Partition of Heirs Act (“UPHPA”) is based on a model statute thus far enacted in 18 states and the U.S. Virgin Islands which addresses a widespread, well-documented problem faced by many families across the State and Country who have been dispossessed of their real property and much of their real property-related wealth over the past several decades as a result of court-ordered partition sales of tenancy-in-common property – or real property owned by two or more people with undivided interests in the property. The UPHPA is designed to help preserve family wealth passed down from generation to generation by limiting the ability of real estate speculators to use partition actions to acquire property owned by tenants-in-common through court-ordered auctions at well below fair market value.

Under current law, any co-owner, no matter how small a fraction of the property they own, can petition the court to partition to the property. Unless it is possible to physically divide the property into equitable pieces that match the distribution of property rights, which is nearly always impossible, the court has no choice but to order the sale of the property and force the family living on or caring for the property to vacate. This tactic of forcing the below-market, court-ordered sale of tenancy-in-common property mainly affects economically disadvantaged families, with a particular impact on African-American owners of multi-generational family property, but it impacts all races, ethnicities, classes, and genders.

The UPHPA seeks to address the problems caused by current partition law through three main tenets: (1) buyout provisions for co-owners opposing the sale request; (2) adding substance to the preference for partition in kind actions; and (3) a restructured sales procedure designed to improve sales price in a significant way. Enacting the UPHPA would also promote conservation of forests and ecologically responsible farmland management by promoting the relationship between economic benefit, land retention, and family legacy on the one hand and sustainable land use on the other hand. It unlocks financial and educational resources to help property owners protect, cultivate, and economically benefit from their land, with important collateral benefits to society at large.



This bill is a result of the collective efforts spanning over a year of myself; Delegate Sandy Rosenberg; Thomas Mitchell, the principal drafter of the bill, Ben Orzeske, the Chief Counsel of the Uniform Law Commission that adopted the Model UHPA; Bill O'Connell, the Legislative Director of the Maryland State Bar Association Real Property Section; a coalition of more than 15 conservation organizations; the Gilbert law firm; and many other supporters representing diverse interests across our state.

A nearly identical version of this bill was passed in Virginia in 2020, and contacts in the District of Columbia inform me that their version of this bill, Bill 24-156, is expected to be reported favorably to the D.C. Council this spring, and is one of the top 5 bill priorities out of more than 50 currently in the Committee on Judiciary and Public Safety. They are not expecting any opposition to the bill. Versions of the UHPA have also been enacted in New York, Connecticut, South Carolina, Georgia, Florida, Mississippi, Texas, California, and other states across the country, and bills are pending in New Jersey, Massachusetts, Kentucky, and elsewhere. Maryland should not be left behind in enacting these common sense protections for vulnerable property owners that will support stable communities and better enable responsible and sustainable property ownership that will benefit all Marylanders.

Tenancy-in-common property describes real property that two or more individuals commonly own, whereby each owner has an undivided fractional interest in the entire property. It is the most prevalent form of common ownership of real property in the United States, in part because it is the default ownership structure when two or more people enter into ownership of real property. Heirs' property is a particular type of tenancy-in-common property that is at least partially family-owned, as specifically defined in relevant statutes. Critically, heirs' property is created every time real property is passed intestate, or when someone dies without a will, based strictly on the application of intestate succession laws. Thus, this issue arises in families of all racial, ethnic, and socioeconomic backgrounds across Maryland – and is often unbeknownst to the family members impacted.

Tenancy-in-common property is also the most unstable form of common property ownership in the United States. Most states, including Maryland, have archaic partition laws that permit any single co-owner of tenancy-in-common property, commonly called a cotenant, to petition the court to divide the property – a right that the UHPA does not disturb. The court can order a partition-by-sale of the property and distribute the profits from the sale to the co-tenants. The objecting cotenants have no legal rights or recourse to halt the sale of the property, even if they have occupied the property or been stewards of the land for generations. Moreover, under current partition law in Maryland, the court has almost complete discretion over the procedures implemented in a partition action, including in a partition-by-sale. partition-by-sale process, and that discretion includes deciding whether to require *any* of the traditional hallmarks of the sale of real property on the open market.

The Maryland UHPA modifies existing law governing the partition of real property that is owned under a tenancy-in-common to establish procedures for the purpose of requiring the court in an action to partition real property to determine the market value of the property unless the court makes certain determinations; establishing procedures for the purchase of interests in



real property by cotenants, for the partition in kind of real property among cotenants, and for the partition by sale of real property on the open market by a real estate broker licensed in this State; and generally relating to the partition of real property.

This bill is based substantially on the Model Act, but expands its protections to all tenancy-in-common property, rather than just heirs property. Notably, this expansion of the law's impact is endorsed by Delegate Sandy Rosenberg, the bill sponsor in the House; Thomas Mitchell, the primary drafter of the Model Act; Bill O'Connell, the Maryland State Bar Association Real Property Section Legislative Director; Ben Orzeske, the Chief Counsel of the Uniform Law Commission who published the Model Act; and others. This is the product of careful thought and deliberation regarding the needs of all Marylanders who own tenancy-in-common property and are currently subject to our State's outdated partition laws.

The UPHPA rights a historical wrong and protects real property wealth for our most vulnerable populations. A key feature of the UPHPA is the requirement that any cotenant except the cotenant that requested the partition-by-sale may buy all the interests of the cotenants that requested partition by sale. The UPHPA also provides substance requiring that the court give preference to partition-in-kind actions and only utilize the partition-by-sale option when ordering a partition-in-kind will result in "great prejudice to the cotenants as a group." Critically, under the UPHPA, the value of the property is further preserved through the requirement that the court determine the property's fair market value, and that the sale be an open-market sale. This requires the sale mirror the process followed by typical buyers and sellers, rather than auction-style fire sales that are often used for partition by sale actions that typically yield below-market sales prices. This fair market value determination preserves and protects the value of the asset for all cotenants, and almost entirely removes the incentive for speculators to buy a share of tenancy-in-common property, force a partition-by-sale, and benefit from the courthouse steps, below-market auction of the property. The value of the asset will stay with the cotenants instead of being transferred to the speculator.

Existing partition law does not adequately protect underprivileged property owners of having generational family real estate wealth stripped from them without their consent. Although this issue primarily impacts African American and other poor families who inherit property through intestate succession, or inheritance without a will, the negative impacts of current law are not limited by race, ethnicity, class, or gender, and citizens in every county in Maryland are at risk of having their real property stripped from their hands. It is time for Maryland to join other states in recognizing the importance of protecting our citizens' real estate wealth and land assets.