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The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings
Miller Senate Office Building, 2 East Wing
Annapolis, MD 21401

RE: SB 92 - Favorable

Dear Chair Smith and Committee Members:

Thank you for allowing me the opportunity to testify in strong support of the Maryland Uniform Partition of Heirs Property Act (“UPHPA”) (Senate Bill 92). I am an attorney at Gilbert LLP, a Washington, DC law firm, where I and my colleague Richard Shore have been working for the past year to support enactment of the UPHPA in our corner of the world, so to speak, Maryland and DC, hopefully joining Virginia, which enacted the UPHPA in 2020, 17 other states, and one U.S. territory that have already taken this step. The UPHPA is crucial legislation to correct inequities in current partition law in Maryland where, as in the rest of the country, owners of tenancy in common property historically have been subject to abusive partition actions that force them to sell their property when just one joint tenant wants to do so, and deprives them of the full value of that property when it is sold. While this problem can affect any tenants in common, historically it has had a particularly pernicious impact on African-American and other disadvantaged groups.

Current law does not provide adequate protection for owners of tenancy-in-common property. Under a tenancy-in-common, each co-tenant has an indivisible interest in real property. “Heirs’ property” is a subset of tenancy-in-common property that is created by operation of intestate laws that create common ownership of property among surviving family members when an individual dies without a will – an issue that affects all races, socioeconomic classes, and ethnicities, and applies in both rural and urban communities. Maryland law permits any co-tenant to file a partition action with the court, no matter how small their property interest. Under these partition actions, the court is permitted to divide the property into separate physical parcels corresponding to the proportional interests in the property or, as is almost always done instead, the court can order the partition-by-sale of the entire property, even against the will of the other co-tenants. These partition-by-sales often occur quickly through auction on the courthouse steps, and garner a sale price well below the market value. Co-tenants who have no desire to sell are thus forced to quickly

vacate property that in many cases has been in their family for generations – land that often has significant personal, historical, and cultural significance to the owners – and they receive a mere fraction of the economic value of the property as compensation, with a devastating impact on their generational family wealth.

Partition law creates perverse incentives for real estate speculators to acquire a single share of property that is held under a tenancy-in-common, force a sale of the entire property, acquire the property at a below-market cost, and then flip it or develop it, shifting multi-generational wealth from the current family owners to the speculator. Such actions are one reason African-American land ownership declined dramatically in the 20th Century, and they remain a significant threat today. The individual owner from whom the speculator acquired the share that enables this process may have been strapped for cash and been paid a pittance for his or her share and almost certainly did not have any understanding of the consequences of selling that share or of other options for realizing reasonable value from the property in question. It bears mentioning that because partition law is very counterintuitive in important ways, many disadvantaged property owners fundamentally misunderstand how partition law works. For understandable reasons, many often assume that their property can only be sold with the unanimous consent of all the co-tenants (or at least a supermajority of them) and are shocked to discover when a partition action involving their property is being adjudicated that one co-tenant acting alone, in this case the speculator, can extinguish ownership for the entire group.

No one who owns real property, who is aware of readily available options for realizing value from that property, and who has resources to pursue those options, would choose to sell real estate in this manner or, more broadly, to structure their real property ownership in the first place under the default rules governing a tenancy in common. I and many others believe the time has come, in Maryland and nationwide, to eliminate this easy legal path to depriving unsuspecting owners of property, particularly economically disadvantaged African-American owners, of real estate that has been in their family for generations, that represents a significant measure of their family's wealth, and that often holds significant historic, family-heritage, or other non-economic value to heirs as well.

The UPHPA offers a concrete way to address systemic inequities that inevitably result from current partition law without removing the agency of any co-tenant of the property to extinguish his or her own interest in the property. The UPHPA's legal changes are modest, but its equity impact is large. Under the UPHPA, any co-tenant still has the right to petition the court for a partition action. The co-tenants, however, have the right to buy out any co-tenant who requests the remedy of partition by sale at the front end of the litigation, thereby potentially relieving the court of having to consider ordering a partition by sale of the entire parcel. If partition by sale is required, the property must be sold by a disinterested broker on the open market and offered at its fair market value, as determined under specific guidelines. The UPHPA serves to protect the interests of all co-tenants, and disincentivizes speculators from targeting vulnerable property owners for unjust windfalls.

Enacting the UPHPA would also serve to benefit the entire state of Maryland. The UPHPA provides an avenue for clarifying the title of real property that ensures co-tenants are paid fair market value for selling their interest in the property, and the act of clarifying the title makes the owners eligible for federal funding and resources otherwise unavailable. For example, the 2018 Farm Bill provides that "heirs' property

The Honorable William C. Smith, Jr.
February 1, 2022
Page 3

GILBERT LLP

owners” in states that enact the UHPA automatically qualify for a farm number, providing access to a host of USDA programs, including lending and disaster relief programs. These resources will enable property owners to better preserve and utilize their land, benefitting the entire community. For this reason, we have been working with a broad coalition of conservation groups across the state that supports this legislation as well, and a number of those conservation groups have submitted a letter in support of the UHPA for the record in this hearing.

African American and other economically disadvantaged families have been forced off their property for far too long using partition laws that are still in place. I am hopeful and encouraged that this committee has taken up this important issue. I and others working for heirs’ property reform appreciate the leadership of Committee Chair Senator Smith in holding this hearing and Senator Augustine in sponsoring this legislation in the Senate. The UHPA provides a golden opportunity to provide owners of tenancy-in-common property with the ability to preserve their land assets and real property wealth, property that is vested with deep meaning for many families, and enact the UHPA Maryland. I thank you all for your time and your focus on this important matter.

Very respectfully,

Rachel Jennings

cc: Senator Malcolm Augustine