

MD UPHA Testimony.pdf

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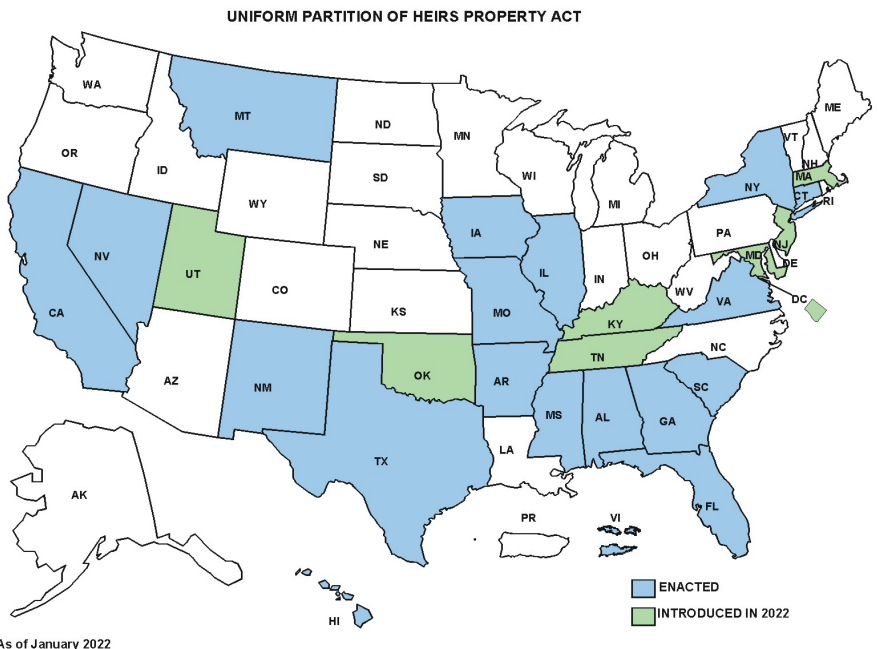
Statement of Benjamin Orzeske, Chief Counsel of the Uniform Law Commission, to the Maryland Senate Judicial Proceedings Committee in support of Senate Bill 92 to adopt the Maryland Uniform Partition of Heirs Property Act, February 3, 2022.

Chair Smith, Vice-Chair Waldstreicher and Members of the Committee:

Thank you for considering Senator Augustine’s legislation to enact the Uniform Partition of Heirs Property Act (UPHPA) in Maryland. This bill is based on a uniform act produced by the Uniform Law Commission (ULC). The Uniform Law Commission is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of the law for which uniformity among the states is advisable. It is comprised of Commissioners from all 50 states, Puerto Rico, the District of Columbia, and the U.S. Virgin Islands. Senator Koch and Representative Young are Commissioners. Maryland has a long and successful history of enacting uniform acts including the Uniform Commercial Code, the Uniform Transfers to Minors Act, the Uniform Anatomical Gift Act, and many dozens of others.

Let me begin by defining two terms. First, a “tenancy-in-common” is a form of ownership where two or more people share an interest in an undivided parcel of real estate. This is the default form of ownership when property is passed to an owner’s heirs at death. For example, if a landowner with three children dies without making a will, the three children will each inherit a one-third, undivided interest in the entire property as tenants-in-common.

Next, “heirs’ property” is defined in this bill as property held as a tenancy-in-common for which there is no written partition agreement, at least one cotenant acquired title from a relative, and 20% or more of the owners or interests are related. You can think of heirs’ property as family-owned real estate that is passed from one generation to the next. After many years of



The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

ownership by the same family, the property may have sentimental value in addition to its monetary value, and for some families it may represent a large percentage of their total wealth. Family members might live on the property, or use it for income from farming or other commercial uses.

The Uniform Partition of Heirs Property Act protects the property rights of families who own heirs' property and the real estate wealth that is associated with such ownership. Wealthier families often use sophisticated estate planning techniques to create trusts or LLCs to hold the property and ensure their land remains under family control. But property owners without access to professional guidance are more likely to use a simple will to pass assets to their heirs, or to die without a will. In either case, the owner's descendants will take ownership of the real estate as tenants-in-common. If the property passes in this manner through more than one generation, the number of cotenants can quickly multiply.

Here is the issue: the current law governing tenancies-in-common leaves heirs' property vulnerable to devastating court-ordered forced sales. A real estate speculator who purchases one cotenant's interest in the family land can file a partition action seeking a court-ordered sale and potentially purchase the entire property at auction for a price well below its fair market value. An example will illustrate the problem.

Imagine a widow with three children who owns a farm in Maryland. If she dies without a will her three children will inherit the property as tenants-in-common. Imagine further that two of the children would like to maintain family ownership of the farm, but the third child needs cash. If the two other siblings cannot afford to buy the third child's share, the third child might sell it to a real estate investor, or lose it to a creditor. Either way, the new cotenant is unrelated to the two other siblings and probably has no personal attachment to the land.

Under current law, the new cotenant can ask the court to partition the farm. Partitions can be done in one of two ways: a partition-in-kind in which the property is physically divided into one parcel for each cotenant based on his or her ownership percentage, or a partition-by-sale in which the entire property is sold and the cotenants split the proceeds. Some parcels of land can be difficult to divide into shares of equal value – particularly when the number of cotenants is large, or when the land includes a house or other improvements. Because money is much easier to divide than land, a court will often order a partition-by-sale, forcing the two siblings in our example to sell their shares of the property against their will.

Forced sales usually bring meager returns. Court-ordered auction procedures are not designed to receive the highest possible purchase price, but rather to sell the property as quickly as possible. An auction might be conducted with minimal notice to the public, little opportunity to inspect the property, and no opportunity for bidders to finance their purchase if bids must be paid in cash soon after the auction is completed. Through this process, the speculator in our example may be able to buy the other siblings' interests at a price well below the property's fair market value. In the end, the siblings who wanted to maintain their family farm lose their property and a

significant part of their inherited wealth.

The Uniform Partition of Heirs Property Act addresses this issue with a series of due process protections for heirs' property owners. A cotenant who asks the court for partition-by-sale of heirs' property must first offer to sell his or her share of the property to the other cotenants. Unless the parties agree on the property value, the court will determine the value of the property, normally by ordering an independent appraisal. Any cotenant may challenge the preliminary valuation and the court, after a hearing, will make the final determination. The cotenants who did *not* request partition-by-sale will then have 45 days to exercise a right of first refusal to purchase the seller's share at the court-determined value, and an additional 60 days in which to arrange financing.

If the cotenants do not exercise their option to purchase, the court *must* order partition-in-kind, allowing the heirs to retain their share of the real estate, unless the court finds, after consideration of the factors listed in the bill, that partition-in-kind is not possible or will result in great prejudice to the owners as a group. In that case, the court may order partition-by-sale, but the property must be listed on the open market by a court-appointed real estate broker for a reasonable period of time at a price no lower than the court-determined value. If the property still does not sell, the court may approve the highest offer, or may permit a sale by auction or by sealed bid.

Finally, I want to emphasize what this bill will *not* do. The act does not prevent a willing seller from selling their property to a willing buyer. It only protects landowners who want to *keep* their property from being forced to sell.

In closing, you should know that the 2018 federal Farm Bill built upon the Uniform Partition of Heirs Property Act in provisions seeking to enable farmers and ranchers who own heirs' property to participate much more fully in a wide range of USDA programs, including lending and disaster relief programs. The Farm Bill provides priority consideration for certain federal development loans to farmers and ranchers who are located in a state that has adopted the act.

The Uniform Partition of Heirs Property Act has been endorsed by the American Bar Association's (ABA) Section of Real Property, Trust and Estate Law; the ABA's Section of State and Local Government Law, the American College of Real Estate Lawyers; the Center for Heirs' Property Preservation; the Heirs' Property Retention Coalition; the NAACP, and several other organizations.

In summary, enacting the Uniform Partition of Heirs Property Act will protect the property rights of Marylanders who inherit real estate, and help preserve their real estate wealth. The bill does so by providing a series of reasonable court procedures designed to inform heirs of their rights, and give those who wish to retain family-owned real estate the opportunity to do so, without unduly restricting the rights of heirs who wish to sell their inheritance. Thank you for your consideration. I welcome your questions.

SB92 - Maryland Uniform Partition of Heirs Propert

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Position: FAV



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Charlotte Davis, Executive Director

John Hartline, Chair

Testimony in Support of
Senate Bill 92 - Maryland Uniform Partition of Heirs Property Act
Senate Judicial Proceedings Committee
February 03, 2022

The Rural Maryland Council supports Senate Bill 92 - Maryland Uniform Partition of Heirs Property Act. This Bill will require the court in an action to partition real property to determine whether the property is heirs' property for the purpose of partition of the property among certain co-tenants, and to determine the market value of the heir's property. By determining the ownership of heirs' property, it allows owners of such property to have proof of ownership and gives owners of heirs' farmland the opportunity to utilize many programs that they currently do not qualify for.

Heirs' property is land that has been inherited from a family member without a deed or documentation of ownership and can be passed down for generations, resulting in no clear owner or owners of the property. Families that own heirs' property are commonly minority and poorer families. This is because marginalized people historically have less access to certain resources, such as deeds to property or a will, that would have properly transferred ownership to the new owners. Heirs' property is an issue across the entire State. An article published by the Federal Reserve Bank of Richmond, *Whose Land Is It? Heirs' Property and Its Role in Generational Land Retention*, states Maryland's large black population and rural areas like parts of Appalachia and the Eastern Shore are indicators of increased likelihood of heirs' property, and that more urban areas such as Baltimore County also have higher rates of heirs' property. The Article also states the areas of Maryland with the greatest concentration of heirs' property are the Eastern Shore, Baltimore County, and Garrett County.

Owners of heirs' farmland are especially affected by having no proof of ownership. Since owners of heirs' property have no clear title to the land, they are unable to apply for the tax credits and USDA programs that a typical farmer would. By determining heirs' property of these farmlands, it will encourage farm viability and increase the farmers capabilities to grow as an agricultural business, providing more locally grown food to the State, and better economic situations for small farmers. The issue has already been a topic of concern at the federal level, with sections of the 2018 Farm Bill assisting farmers with maintaining their property and applying for programs.

The Rural Maryland Council respectfully requests your favorable support of Senate Bill 92.

The Rural Maryland Council (RMC) is an independent state agency governed by a nonpartisan, 40-member board that consists of inclusive representation from the federal, state, regional, county and municipal governments, as well as the for-profit and nonprofit sectors. We bring together federal, state, county and municipal government officials as well as representatives of the for-profit and nonprofit sectors to identify challenges unique to rural communities and to craft public policy, programmatic or regulatory solutions.

"A Collective Voice for Rural Maryland"

SB 92_Maryland Heirs Property Coalition_fav.pdf

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Position: FAV

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

RE: SB 0092 - Favorable

Dear Chair Smith and Committee Members,

Thank you for holding this public hearing on the Maryland Uniform Partition of Heirs Property Act (“UPHPA”), Senate Bill Number 92. The undersigned members of the Maryland Heirs Property Coalition write in strong support of passage of the Act. We share a concern about the ways in which existing partition law can be used to unfairly deprive underprivileged property owners of generational family real estate wealth. This issue primarily impacts African American and other poor families who inherit property through intestate succession, or inheritance without a will, but it is not limited by race, ethnicity, class, or gender. Protecting heirs property promotes 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 educational and financial resources to help heirs property owners protect, cultivate, and economically benefit from their land, with important collateral benefits to society at large.

Current law does not provide adequate protection for tenants-in-common or the land assets they own. Heirs property is a class of tenancies-in-common. Under Maryland partition laws, any tenant in common can file a partition action with the court. Speculators are able to target tenancy-in-common property, exploit the law to force unwilling sellers to leave their land, and take advantage of the economic incentives attached to the property. Court-ordered partition sales often result in below-market sales of property, and speculators are able to flip or develop the property, solely to their own financial benefit. The generational wealth in the property is shifted from the original family owners to the speculator.

The UPHPA provides common sense protection for owners of tenancy-in-common property, and creates conditions whereby these owners can generate additional wealth from their land – all while preserving the right of any co-owner to extinguish his, her, or their own interest in the property and receive an equitable distribution of its fair market value. The UPHPA puts specific guidelines in place that allow any co-tenant the right to buy out a co-tenant that requests a partition by sale of the property, and, if the property must be sold, requires a disinterested broker sell the property on the open market at its fair market value, as assessed by a court-ordered independent appraisal. Either way, the title to the property becomes clear, possibly for the first time in generations.

In addition, enacting the UPHPA will enable Maryland property owners to fully utilize their land, positively benefitting both the owners and the State. Because each tenant-in-common owns a proportional share of the property, every co-tenant must agree on major decisions affecting the land – including using the property as collateral for grants or loans, and permitting resources to be harvested from the land. This problem is exacerbated with tenancy-in-common property – particularly heirs

property – where there is lack of clear title to the property, as is often the case with property transferred without a will. The UPHPA, however, provides avenues for clarifying titles, and otherwise unlocks access to critical resources and income generating programs. Pursuant to the 2018 Farm Bill, if Maryland enacts the UPHPA, owners of heirs property automatically qualify for a farm number, which provides access to a range of USDA programs, including lending and disaster relief programs. Typically, USDA Programs require proof of ownership and control of the land to obtain a farm number. Maryland would also be given priority consideration for a legal assistance fund that allocates to certain organizations that help resolve title problems. Clarifying title would also make income available to property owners willing to implement certain conservation practices on their land. For example, owners can qualify for services that pay for waterfront buffers, or owners can be paid for putting their land under a conservation easement. The UPHPA thus enables tenants-in-common to maximize the value and use of their property.

We respectfully request that the Maryland General Assembly enact the UPHPA. This action will add our great state to the other eighteen states that have had the wisdom to do so. This is a critical protection to ensure Maryland property owners can remain on their land and have access to resources to protect and develop that land – land which, in often cases, their ancestors have stewarded for generations. Quite simply, the UPHPA ensures that the interests of all owners of tenancy-in-common property are protected and removes the incentives for speculators (or sometimes even co-owners) to poach property at a fraction of its cost. We hope you will recognize the tremendous positive impact the UPHPA will have on Maryland’s citizens and its natural resources, and enact the UPHPA in Maryland.

We thank you all for your time and your attention to this important matter.

Very sincerely,

Chesapeake Conservancy
Chesapeake Conservation Partnership
Eastern Shore Land Conservancy
Forever Maryland
Lower Shore Land Trust
Maryland Environmental Trust
ShoreRivers
Daniel Rider, Landowner, Dorchester County
Lisetta Silvestri, Aluma of the University of Maryland Francis King Carey School of Law

CC: Senator Malcolm Augustine

SB 92_Black Family Land Trust_fav.pdf

Uploaded by: Lillian Alexander

Position: FAV



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1 February 2022

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

RE: SB 0092 – Favorable

Dear Chair Smith and Committee Members:

I am Ebonie Alexander, Executive Director of the Black Family Land Trust, Inc., one of the nation's only land trusts dedicated to the protection of land assets of African American and other historically underserved groups. It is a fundamental economic truth that land is an asset that is foundational to building both individual and family wealth. Historically, partition law across the country had inadequate protections for owners of heirs property – property passed down in families through generations by operation of law rather than through legal bequests at the death of the property owner. With the adoption of the Uniform Partition of Heirs Property Act over the past several years in 18 states and counting, that historical anomaly is changing. The Black Family Land Trust strongly supports such change in Maryland as well, and we encourage this committee to act favorably on the Maryland Uniform Partition of Heirs Property Act (“UPHPA”), Senate Bill Number 92.

The Black Family Land Trust was one of the lead organizations responsible for the passage of the UPHPA by the 2020 Virginia General Assembly, which was signed into law effective July 1, 2020. With guidance from the Uniform Law Commission and Law Professor Thomas Mitchell, the drafter of the model act, the legislation provides land asset protection to thousands of Virginians, rural and urban. Maryland's enactment of the UPHPA would further that goal, and similarly benefit thousands of Marylanders.

Under the existing legal framework, any fractional owner of land owned by tenancy in common can force a partition sale of the entire property in order to realize his or her share of the sales proceeds of the property. When it comes to heirs property or other tenancy in common property owned by multiple owners, potentially large numbers of owners who do not even know each other, this creates a perverse incentive and opportunity for speculators to identify one of the tenants in common, purchase his or her share, and then force a sale of the entire property by

ensuring, protecting, preserving



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auction on the courthouse steps, simultaneously acquiring the entire property, against the wishes of most of the owners, at a below market value. No one with access to lawyers and real estate sales professionals would choose to sell their property in this manner, but people in economically disadvantaged groups do not have experience with or ready access to such resources.

The UHPA promotes economic equality for all persons by creating a legal framework that better protects land owned under a tenancy-in-common. While this issue affects individuals of all socioeconomic statuses, races, and religions, this issue disproportionately affects African American and other low-income families. African American land ownership has declined more than 80% since 1910. According to the USDA and other entities, much of this land has been lost pursuant to court-ordered partition actions of “heirs property”—a subset of tenancy-in-common property involving family land that is passed down to two or more heirs when the property owner dies without a will. As with all tenancy-in-common property, the heirs become co-owners of the property. Property is often subdivided in this way over generations of intestate inheritances—often without family members even knowing they own land as a family legacy of their ancestors. Often, those living on the property or tending to the land are unaware other co-tenants even exist. They often believe their property ownership is secure because they pay mortgages and taxes on the property, they live on the property, and they make productive use of the land. The families are shocked when they are haled into court after a co-tenant petitions the court for an equitable distribution of their proportion of the value of the property. The court, having little other choice under partition law, forces a partition-by-sale, which most often results in a quick auction of the property at below market value, whereby families who have lived and worked on the land for generations are suddenly forced from places that have significant cultural, historical, and economic value to the family.

The UHPA changes partition laws, and protects the land ownership of African American and other economically disadvantaged families. The UHPA seeks to address the problems caused by tenancies in common, including heirs property, by requiring buyout provisions for co-owners opposing the sale request, adding substance to the preference for partition in kind actions, and restructuring the sales procedure to improve sales price in a significant way, including by requiring the court to conduct a fair market value assessment, and by requiring an open-market sale, as by listings on the multiple listing service designed by the real estate sales industry to connect willing buyers and interested sellers. The co-tenant’s right to sell his or her interest in inherited real estate is maintained, while the rights of the other co-tenants not to be dispossessed of their land, and not to have it sold out from under them at below-market values, is also protected.

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Too many African Americans and other unprivileged individuals and families have been deprived of their land assets, and the generational family wealth that it represents, for far too long. Enacting the UPPA is one step the Maryland legislature can take to stop this practice from continuing, and help ensure the preservation of family wealth passed to descendants in the form of real property. It is therefore without hesitation, that the Black Family Land Trust supports Senate Bill 92, the Uniform Partition of Heirs Property Act.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lillian Ebonie Alexander". The signature is fluid and cursive.

Lillian "Ebonie" Alexander
Executive Director

CC: Senator Malcolm Augustine

SB 92.pdf

Uploaded by: Lisa May

Position: FAV



Senate Bill 92 – Maryland Uniform Partition of Heirs Property Act

Position: Support

Maryland REALTORS® strongly supports SB 92 as a means to preserve generational wealth that is acquired through an inherited property.

The Uniform Partition of Heirs Property Act (UPHPA) was created to prevent a loss of equity that can occur when multiple parties inherit a property as tenants in common. In this situation, real estate speculators can acquire a small share from a single heir, then force the sale of the property from the remaining heirs. That speculator then purchases the entire property through a court-ordered sale at below market value.

The UPHPA creates protections for heirs to help them preserve wealth from an inherited property. It provides for an appraisal of the property to determine its fair market value, provides advance notice to co-tenants that one of the parties is seeking a partition sale, and allows the remaining co-tenants to purchase interests in the property to prevent a forced sale.

Several studies have noted that this process has resulted in a substantial loss of land and wealth, has limited economic opportunities, and contributed to the racial wealth gap that is present today. Analysis from the Federal Reserve Bank of Richmond shows that heirs property exists throughout Maryland, but is most concentrated in the Eastern Shore, Garrett County and Baltimore County. It is disproportionately felt in rural areas and by economically disadvantaged populations who do not have the means to execute detailed estate planning.

As of today, nineteen states have enacted some form of the model Uniform Partition of Heirs Property Act, concentrated across the South and Midwest. Another seven states, including Maryland, are currently considering adoption this year.

Maryland REALTORS® urges your favorable report on SB 92.

For more information contact bill.castelli@mdrealtor.org, susan.mitchell@mdrealtor.org, lisa.may@mdrealtor.org or theresa.kuhns@mdrealtor.org

Amendment SB92.pdf

Uploaded by: Malcolm Augustine

Position: FAV



SB0092/653229/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

31 JAN 22
10:36:04

BY: Senator Augustine
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 92
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Maryland Uniform Partition of Heirs Property Act” and substitute “Real Property – Partition of Property”; strike beginning with “whether” in line 4 down through “determine” in line 5; in lines 7, 8, and 10, in each instance, strike “heirs” and substitute “real”; in line 16, strike “and reenacting, with amendments,”; and in lines 23 and 24, strike “Maryland Uniform Partition of Heirs Property Act” and substitute “Partition of Real Property”.

AMENDMENT NO. 2

On pages 2 through 13, strike in their entirety the lines beginning with line 16 on page 2 through line 29 on page 13, inclusive, and substitute:

“Article – Real Property

[14–107.

(a) A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights. The right to a partition or sale includes the right to a partition or sale of any separate lot or tract of property, and the bill or petition need not pray for a partition of all the lots or tracts.

(Over)

(b) This section applies regardless of whether any party, plaintiff, or defendant is a minor, disabled, or a nonresident.

(c) A sale and deed made pursuant to an order of the court in the exercise of the power provided in this section is good and sufficient at law to transfer property of the person. A deed executed in exercise of the above power provided in this section shall be executed by the person the court appoints for the purpose.

(d) If any bill or petition is filed under the provisions of this section for the sale of property, any person holding a mortgage, other encumbrance on the property, or an undivided interest in the property may be made a party to the bill, and the property shall be sold free and clear of the mortgage or other encumbrance. However, the rights of a lienor shall be protected in the distribution of the proceeds of the sale.]

SUBTITLE 7. PARTITION OF REAL PROPERTY.

14-701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “DETERMINATION OF VALUE” MEANS A COURT ORDER DETERMINING THE FAIR MARKET VALUE OF PROPERTY UNDER § 14-707 OR § 14-711 OF THIS SUBTITLE OR ADOPTING THE VALUATION OF PROPERTY AGREED TO BY ALL COTENANTS.

(C) “PARTITION BY SALE” MEANS A COURT-ORDERED SALE OF PROPERTY, WHETHER BY AUCTION, SEALED BIDS, OR OPEN-MARKET SALE CONDUCTED UNDER § 14-711 OF THIS SUBTITLE.

(D) “PARTITION IN KIND” MEANS THE DIVISION OF PROPERTY INTO PHYSICALLY DISTINCT AND SEPARATELY TITLED PARCELS.

(E) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

14-702.

(A) REAL PROPERTY SHALL BE PARTITIONED UNDER THIS SUBTITLE UNLESS ALL OF THE COTENANTS AGREE OTHERWISE IN A RECORD.

(B) THE MARYLAND RULES APPLY TO ACTIONS UNDER THIS SUBTITLE, EXCEPT TO THE EXTENT THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS SUBTITLE.

14-703.

IN AN ACTION UNDER THIS SUBTITLE, THE COURT ON ITS OWN MOTION OR ON MOTION OF ANY PARTY MAY ISSUE AN ORDER:

(1) FOR THE APPOINTMENT OF AN ATTORNEY TO PROTECT THE INTEREST OF ANY PARTY TO THE SAME EXTENT AND EFFECT AS PROVIDED UNDER RULE 2-203 OF THE MARYLAND RULES WITH RESPECT TO INDIVIDUALS NOT IN BEING;

(2) TO REQUIRE JOINDER OF ANY ADDITIONAL PARTIES THAT ARE NECESSARY OR PROPER; AND

(3) TO REQUIRE THAT THE PLAINTIFF:

(i) PROCURE A TITLE REPORT SUPPORTED BY AN AFFIDAVIT BY THE PERSON MAKING THE TITLE SEARCH THAT A COMPLETE SEARCH OF THE PUBLIC RECORDS HAS BEEN PERFORMED IN ACCORDANCE WITH

GENERALLY ACCEPTED STANDARDS OF TITLE EXAMINATION FOR THE APPROPRIATE PERIOD AS DETERMINED BY THE COURT, BUT NOT LESS THAN 60 YEARS; AND

(II) DESIGNATE A PLACE WHERE THE TITLE REPORT SHALL BE KEPT FOR INSPECTION, USE, AND COPYING BY THE PARTIES.

14-704.

IN ADDITION TO ANY PERSONS REQUIRED TO BE NAMED AS DEFENDANTS IN AN ACTION UNDER THIS SUBTITLE, THE PLAINTIFF MAY NAME AS DEFENDANTS ALL PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO THE PLAINTIFF'S TITLE, OR ANY CLOUD ON THE PLAINTIFF'S TITLE TO THE PROPERTY.

14-705.

(A) (1) IF, ON AFFIDAVIT OF THE PLAINTIFF, IT APPEARS TO THE SATISFACTION OF THE COURT THAT THE PLAINTIFF HAS USED REASONABLE DILIGENCE TO ASCERTAIN THE IDENTITY AND RESIDENCE OF AND TO SERVE A SUMMONS ON THE PERSONS NAMED AS UNKNOWN DEFENDANTS AND PERSONS JOINED AS TESTATE OR INTESTATE SUCCESSORS OF A PERSON KNOWN OR BELIEVED TO BE DEAD, THE COURT SHALL ORDER SERVICE BY PUBLICATION IN ACCORDANCE WITH RULE 2-122 OF THE MARYLAND RULES AND THE PROVISIONS OF THIS SUBTITLE.

(2) THE ORDER SHALL DIRECT THAT A COPY OF THE SUMMONS, THE COMPLAINT, AND THE ORDER FOR PUBLICATION BE MAILED IMMEDIATELY TO THE PARTY IF THE PARTY'S ADDRESS IS ASCERTAINED BEFORE EXPIRATION OF THE TIME PRESCRIBED FOR PUBLICATION OF THE SUMMONS.

(B) THIS SECTION DOES NOT AUTHORIZE SERVICE BY PUBLICATION ON ANY PERSON NAMED AS AN UNKNOWN DEFENDANT WHO IS IN OPEN AND ACTUAL POSSESSION OF THE PROPERTY.

14-706.

(A) IF THE COURT ORDERS SERVICE BY PUBLICATION, THE PLAINTIFF SHALL:

(1) POST, NOT LATER THAN 10 DAYS AFTER THE DATE THE ORDER IS ISSUED, A COPY OF THE SUMMONS AND COMPLAINT IN A CONSPICUOUS PLACE ON THE PROPERTY THAT IS THE SUBJECT OF THE ACTION; AND

(2) FILE PROOF THAT THE SUMMONS HAS BEEN SERVED, POSTED, AND PUBLISHED AS REQUIRED IN THE ORDER.

(B) IF THE COURT ORDERS SERVICE BY PUBLICATION, THE PUBLICATION SHALL USE THE LEGAL DESCRIPTION OF THE PROPERTY ALONG WITH ITS STREET ADDRESS, OR OTHER COMMON DESIGNATION, IF ANY.

14-707.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, THE COURT SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY BY ORDERING AN APPRAISAL IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION.

(B) THE COURT MAY ACCEPT A PREVIOUSLY COMPLETED APPRAISAL FILED WITH THE COURT AS EVIDENCE OF VALUE PROVIDED THAT:

(1) THE APPRAISAL IS DATED NOT EARLIER THAN 6 MONTHS BEFORE THE FILING OF THE PARTITION ACTION;

(2) THE APPRAISAL WAS COMPLETED BY A DISINTERESTED REAL ESTATE APPRAISER LICENSED IN THE STATE; AND

(3) NO PARTY OBJECTS TO THE APPRAISED VALUE.

(C) IF ALL COTENANTS HAVE AGREED TO THE VALUE OF THE PROPERTY OR TO ANOTHER METHOD OF VALUATION, THE COURT SHALL ADOPT THAT VALUE OR THE VALUE PRODUCED BY THE AGREED METHOD OF VALUATION.

(D) IF THE COURT DETERMINES THAT THE EVIDENTIARY VALUE OF AN APPRAISAL IS OUTWEIGHED BY THE COST OF THE APPRAISAL AND NO PREVIOUSLY COMPLETED APPRAISAL WAS FILED UNDER SUBSECTION (B) OF THIS SECTION, THE COURT, AFTER AN EVIDENTIARY HEARING, SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY AND SEND NOTICE TO THE PARTIES OF THE VALUE.

(E) (1) IF THE COURT ORDERS AN APPRAISAL UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL APPOINT A DISINTERESTED REAL ESTATE APPRAISER LICENSED IN THE STATE TO DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY ASSUMING SOLE OWNERSHIP OF THE FEE SIMPLE ESTATE.

(2) ON COMPLETION OF THE APPRAISAL, THE APPRAISER SHALL FILE A SWORN OR VERIFIED APPRAISAL WITH THE COURT.

(F) IF AN APPRAISAL IS CONDUCTED UNDER SUBSECTION (A) OF THIS SECTION OR FILED WITH THE COURT UNDER SUBSECTION (B) OF THIS SECTION, NOT LATER THAN 10 DAYS AFTER THE APPRAISAL IS FILED, THE COURT SHALL SEND NOTICE TO EACH PARTY WITH A KNOWN ADDRESS, STATING:

(1) THE APPRAISED FAIR MARKET VALUE OF THE PROPERTY;

(2) THAT THE APPRAISAL IS AVAILABLE AT THE OFFICE OF THE CLERK; AND

(3) THAT A PARTY MAY FILE WITH THE COURT AN OBJECTION TO THE APPRAISAL NOT LATER THAN 30 DAYS AFTER THE NOTICE IS SENT, STATING THE GROUNDS FOR THE OBJECTION.

(G) (1) IF AN APPRAISAL IS FILED WITH THE COURT UNDER SUBSECTION (E) OF THIS SECTION, THE COURT SHALL CONDUCT A HEARING TO DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY NOT SOONER THAN 30 DAYS AFTER A COPY OF THE NOTICE OF THE APPRAISAL IS SENT TO EACH PARTY UNDER SUBSECTION (F) OF THIS SECTION, WHETHER OR NOT AN OBJECTION TO THE APPRAISAL IS FILED UNDER SUBSECTION (F)(3) OF THIS SECTION.

(2) IN ADDITION TO AN APPRAISAL DESCRIBED UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE COURT MAY CONSIDER ANY OTHER EVIDENCE OF VALUE OFFERED BY A PARTY.

(H) AFTER A HEARING UNDER SUBSECTION (G) OF THIS SECTION, BUT BEFORE CONSIDERING THE MERITS OF THE PARTITION ACTION, THE COURT SHALL DETERMINE THE FAIR MARKET VALUE OF THE PROPERTY AND SEND NOTICE TO THE PARTIES OF THE VALUE.

14-708.

(A) IF ANY COTENANT REQUESTED PARTITION BY SALE, AFTER THE DETERMINATION OF VALUE UNDER § 14-707 OF THIS SUBTITLE, THE COURT SHALL SEND NOTICE TO THE PARTIES THAT ANY COTENANT, EXCEPT A COTENANT THAT REQUESTED PARTITION BY SALE, MAY BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE.

(Over)

(B) NOT LATER THAN 45 DAYS AFTER THE NOTICE IS SENT UNDER SUBSECTION (A) OF THIS SECTION, ANY COTENANT, EXCEPT A COTENANT THAT REQUESTED PARTITION BY SALE, MAY GIVE NOTICE TO THE COURT THAT THE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE.

(C) THE PURCHASE PRICE FOR EACH OF THE INTERESTS OF A COTENANT THAT REQUESTED PARTITION BY SALE IS THE VALUE OF THE ENTIRE PARCEL DETERMINED UNDER § 14-707 OF THIS SUBTITLE MULTIPLIED BY THE COTENANT'S FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL.

(D) AFTER EXPIRATION OF THE PERIOD DESCRIBED IN SUBSECTION (B) OF THIS SECTION, THE FOLLOWING RULES APPLY:

(1) IF ONLY ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL NOTIFY ALL THE PARTIES;

(2) IF MORE THAN ONE COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL:

(i) ALLOCATE THE RIGHT TO BUY THOSE INTERESTS AMONG THE ELECTING COTENANTS BASED ON EACH ELECTING COTENANT'S EXISTING FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL DIVIDED BY THE TOTAL EXISTING FRACTIONAL OWNERSHIP OF ALL COTENANTS ELECTING TO BUY;

(ii) NOTIFY ALL THE PARTIES THAT MORE THAN ONE COTENANT ELECTED TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE; AND

(III) SEND NOTICE OF THE PRICE TO BE PAID BY EACH ELECTING COTENANT; OR

(3) IF NO COTENANT ELECTS TO BUY ALL THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE, THE COURT SHALL SEND NOTICE TO ALL THE PARTIES AND RESOLVE THE PARTITION ACTION UNDER § 14-711(A) AND (B) OF THIS SUBTITLE.

(E) (1) IF THE COURT SENDS NOTICE TO THE PARTIES UNDER SUBSECTION (D)(1) OR (2) OF THIS SECTION, THE COURT SHALL SET A DATE NOT SOONER THAN 60 DAYS AFTER THE DATE THE NOTICE WAS SENT BY WHICH ELECTING COTENANTS MUST PAY THEIR APPORTIONED PRICE INTO THE COURT.

(2) AFTER THE DATE SET BY THE COURT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE FOLLOWING RULES APPLY:

(I) IF ALL ELECTING COTENANTS PAY THEIR APPORTIONED PRICE INTO COURT ON TIME, THE COURT SHALL ISSUE AN ORDER REALLOCATING ALL THE INTERESTS OF THE COTENANTS AND DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THE FUNDS;

(II) IF NO ELECTING COTENANT PAYS THE COTENANT'S APPORTIONED PRICE ON TIME, THE COURT SHALL RESOLVE THE PARTITION ACTION UNDER § 14-709(A) AND (B) OF THIS SUBTITLE AS IF THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE NOT PURCHASED; OR

(III) IF ONE OR MORE BUT NOT ALL OF THE ELECTING COTENANTS FAIL TO PAY THEIR APPORTIONED PRICE ON TIME, THE COURT, ON MOTION, SHALL GIVE NOTICE OF THE INTEREST REMAINING AND THE PRICE FOR THAT INTEREST TO THE ELECTING COTENANTS THAT PAID THEIR APPORTIONED PRICE.

(F) (1) NOT LATER THAN 20 DAYS AFTER THE COURT GIVES NOTICE UNDER SUBSECTION (E)(2)(III) OF THIS SECTION, ANY COTENANT THAT PAID THE COTENANT'S APPORTIONED PRICE MAY ELECT TO PURCHASE ALL OF THE REMAINING INTEREST BY PAYING THE ENTIRE PRICE INTO THE COURT.

(2) AFTER THE 20-DAY PERIOD DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE FOLLOWING RULES APPLY:

(I) IF ONLY ONE COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL:

1. ISSUE AN ORDER REALLOCATING THE REMAINING INTEREST TO THAT COTENANT; AND

2. PROMPTLY ISSUE AN ORDER REALLOCATING THE INTERESTS OF ALL OF THE COTENANTS AND DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THEM;

(II) IF NO COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL RESOLVE THE PARTITION ACTION UNDER § 14-709(A) AND (B) OF THIS SUBTITLE AS IF THE INTERESTS OF THE COTENANTS THAT REQUESTED PARTITION BY SALE WERE NOT PURCHASED; AND

(III) IF MORE THAN ONE COTENANT PAYS THE ENTIRE PRICE FOR THE REMAINING INTEREST, THE COURT SHALL:

1. REAPPORTION THE REMAINING INTEREST AMONG THOSE PAYING COTENANTS, BASED ON EACH PAYING COTENANT'S ORIGINAL FRACTIONAL OWNERSHIP OF THE ENTIRE PARCEL DIVIDED BY THE TOTAL ORIGINAL FRACTIONAL OWNERSHIP OF ALL COTENANTS THAT PAID THE ENTIRE PRICE FOR THE REMAINING INTEREST; AND

2. PROMPTLY ISSUE AN ORDER REALLOCATING ALL OF THE COTENANTS' INTERESTS, DISBURSE THE AMOUNTS HELD BY THE COURT TO THE PERSONS ENTITLED TO THEM, AND REFUND ANY EXCESS PAYMENT HELD BY THE COURT.

(G) NOT LATER THAN 45 DAYS AFTER THE COURT SENDS NOTICE TO THE PARTIES UNDER SUBSECTION (A) OF THIS SECTION, ANY COTENANT ENTITLED TO BUY AN INTEREST UNDER THIS SECTION MAY REQUEST THE COURT TO AUTHORIZE THE SALE AS PART OF THE PENDING ACTION OF THE INTERESTS OF COTENANTS NAMED AS DEFENDANTS AND SERVED WITH THE COMPLAINT BUT THAT DID NOT APPEAR IN THE ACTION.

(H) IF THE COURT RECEIVES A TIMELY REQUEST UNDER SUBSECTION (G) OF THIS SECTION, THE COURT, AFTER A HEARING, MAY DENY THE REQUEST OR AUTHORIZE THE REQUESTED ADDITIONAL SALE ON TERMS THE COURT DETERMINES ARE FAIR AND REASONABLE, SUBJECT TO THE FOLLOWING LIMITATIONS:

(1) A SALE AUTHORIZED UNDER THIS SUBSECTION MAY OCCUR ONLY AFTER THE PURCHASE PRICES FOR ALL INTERESTS SUBJECT TO SALE UNDER SUBSECTIONS (A) THROUGH (F) OF THIS SECTION HAVE BEEN PAID INTO COURT AND THOSE INTERESTS HAVE BEEN REALLOCATED AMONG THE COTENANTS AS PROVIDED IN SUBSECTIONS (A) THROUGH (F) OF THIS SECTION; AND

(2) THE PURCHASE PRICE FOR THE INTEREST OF A NONAPPEARING COTENANT IS BASED ON THE COURT'S DETERMINATION OF VALUE UNDER § 14-707 OF THIS SUBTITLE.

14-709.

(Over)

(A) (1) IF UNDER § 14-708 OF THIS SUBTITLE ALL THE INTERESTS OF ALL COTENANTS THAT REQUESTED PARTITION BY SALE ARE NOT PURCHASED BY OTHER COTENANTS, OR IF AFTER THE CONCLUSION OF THE BUYOUT A COTENANT REMAINS THAT HAS REQUESTED PARTITION IN KIND, THE COURT SHALL ORDER PARTITION IN KIND UNLESS THE COURT, AFTER CONSIDERATION OF THE FACTORS LISTED IN § 14-710 OF THIS SUBTITLE, FINDS THAT PARTITION IN KIND WILL RESULT IN GREAT PREJUDICE TO THE COTENANTS AS A GROUP.

(2) IN CONSIDERING WHETHER TO ORDER PARTITION IN KIND, THE COURT SHALL APPROVE A REQUEST BY TWO OR MORE PARTIES TO HAVE THEIR INDIVIDUAL INTERESTS AGGREGATED.

(B) IF THE COURT DOES NOT ORDER PARTITION IN KIND UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL ORDER PARTITION BY SALE UNDER § 14-711 OF THIS SUBTITLE OR, IF NO COTENANT REQUESTED PARTITION BY SALE, THE COURT SHALL DISMISS THE ACTION.

(C) IF THE COURT ORDERS PARTITION IN KIND IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, THE COURT MAY REQUIRE THAT ONE OR MORE COTENANTS PAY ONE OR MORE OTHER COTENANTS AMOUNTS SO THAT THE PAYMENTS, TAKEN TOGETHER WITH THE VALUE OF THE IN-KIND DISTRIBUTIONS TO THE COTENANTS, WILL MAKE THE PARTITION IN KIND JUST AND PROPORTIONATE IN VALUE TO THE FRACTIONAL INTERESTS HELD.

(D) IF THE COURT ORDERS PARTITION IN KIND, THE COURT SHALL ALLOCATE TO THE COTENANTS THAT ARE UNKNOWN, UNLOCATABLE, OR THE SUBJECT OF A DEFAULT JUDGMENT, IF THEIR INTERESTS WERE NOT BOUGHT OUT UNDER § 14-708 OF THIS SUBTITLE, A PART OF THE PROPERTY REPRESENTING THE COMBINED INTERESTS OF THESE COTENANTS AS DETERMINED BY THE COURT AND THIS PART OF THE PROPERTY SHALL REMAIN UNDIVIDED.

14-710.

(A) IN DETERMINING WHETHER PARTITION IN KIND UNDER § 14-709(A) OF THIS SUBTITLE WOULD RESULT IN GREAT PREJUDICE TO THE COTENANTS AS A GROUP, THE COURT SHALL CONSIDER THE FOLLOWING:

(1) WHETHER THE PROPERTY PRACTICABLY CAN BE DIVIDED AMONG THE COTENANTS;

(2) WHETHER PARTITION IN KIND WOULD APPORTION THE PROPERTY IN SUCH A WAY THAT THE AGGREGATE FAIR MARKET VALUE OF THE PARCELS RESULTING FROM THE DIVISION WOULD BE MATERIALLY LESS THAN THE VALUE OF THE PROPERTY IF IT WERE SOLD AS A WHOLE, TAKING INTO ACCOUNT THE CONDITION UNDER WHICH A COURT-ORDERED SALE LIKELY WOULD OCCUR;

(3) EVIDENCE OF THE COLLECTIVE DURATION OF OWNERSHIP OR POSSESSION OF THE PROPERTY BY A COTENANT AND ONE OR MORE PREDECESSORS IN TITLE OR PREDECESSORS IN POSSESSION TO THE COTENANT WHO ARE OR WERE RELATIVES OF THE COTENANT OR EACH OTHER;

(4) THE SENTIMENTAL ATTACHMENT OF A COTENANT TO THE PROPERTY, INCLUDING ANY ATTACHMENT ARISING BECAUSE THE PROPERTY HAS ANCESTRAL OR OTHER UNIQUE OR SPECIAL VALUE TO THE COTENANT;

(5) THE LAWFUL USE BEING MADE OF THE PROPERTY BY A COTENANT AND THE DEGREE TO WHICH THE COTENANT WOULD BE HARMED IF THE COTENANT COULD NOT CONTINUE THE SAME USE OF THE PROPERTY;

(6) THE DEGREE TO WHICH THE COTENANTS HAVE CONTRIBUTED THEIR PRO RATA SHARE OF THE PROPERTY TAXES, INSURANCE, AND OTHER EXPENSES ASSOCIATED WITH MAINTAINING OWNERSHIP OF THE PROPERTY OR

(Over)

HAVE CONTRIBUTED TO THE PHYSICAL IMPROVEMENT, MAINTENANCE, OR UPKEEP OF THE PROPERTY; AND

(7) ANY OTHER RELEVANT FACTOR.

(B) THE COURT MAY NOT CONSIDER ANY ONE FACTOR IN SUBSECTION (A) OF THIS SECTION TO BE DISPOSITIVE WITHOUT WEIGHING THE TOTALITY OF ALL RELEVANT FACTORS AND CIRCUMSTANCES.

14-711.

(A) IF THE COURT ORDERS A SALE OF PROPERTY, THE SALE SHALL BE AN OPEN-MARKET SALE UNLESS THE COURT FINDS THAT A SALE BY SEALED BIDS OR AN AUCTION WOULD BE MORE ECONOMICALLY ADVANTAGEOUS AND IN THE BEST INTEREST OF THE COTENANTS AS A GROUP.

(B) (1) IF THE COURT ORDERS AN OPEN-MARKET SALE AND THE PARTIES, NOT LATER THAN 10 DAYS AFTER THE ENTRY OF THE ORDER, AGREE ON A REAL ESTATE BROKER LICENSED IN THE STATE TO OFFER THE PROPERTY FOR SALE, THE COURT SHALL APPOINT THE BROKER AND ESTABLISH A REASONABLE COMMISSION.

(2) IF THE PARTIES DO NOT AGREE ON A BROKER, THE COURT SHALL APPOINT A DISINTERESTED REAL ESTATE BROKER LICENSED IN THE STATE TO OFFER THE PROPERTY FOR SALE AND SHALL ESTABLISH A REASONABLE COMMISSION.

(3) A BROKER APPOINTED UNDER THIS SUBSECTION SHALL OFFER THE PROPERTY FOR SALE IN A COMMERCIALY REASONABLE MANNER AT A PRICE NOT LOWER THAN THE DETERMINATION OF VALUE AND ON THE TERMS AND CONDITIONS ESTABLISHED BY THE COURT.

(C) IF THE BROKER APPOINTED UNDER SUBSECTION (B) OF THIS SECTION OBTAINS WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE DETERMINATION OF VALUE;

(1) THE BROKER SHALL COMPLY WITH THE REPORTING REQUIREMENTS IN § 14-712 OF THIS SUBTITLE; AND

(2) THE SALE MAY BE COMPLETED IN ACCORDANCE WITH STATE LAW OTHER THAN THIS SUBTITLE.

(D) IF THE BROKER APPOINTED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT OBTAIN WITHIN A REASONABLE TIME AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE DETERMINATION OF VALUE, THE COURT, AFTER HEARING, MAY:

(1) APPROVE THE HIGHEST OUTSTANDING OFFER, IF ANY;

(2) REDETERMINE THE VALUE OF THE PROPERTY AND ORDER THAT THE PROPERTY CONTINUE TO BE OFFERED FOR AN ADDITIONAL TIME; OR

(3) ORDER THAT THE PROPERTY BE SOLD BY SEALED BIDS OR AT AN AUCTION.

(E) IF THE COURT ORDERS A SALE BY SEALED BIDS OR AN AUCTION, THE COURT SHALL SET TERMS AND CONDITIONS OF THE SALE.

(F) IF A PURCHASER IS ENTITLED TO A SHARE OF THE PROCEEDS OF THE SALE, THE PURCHASER IS ALSO ENTITLED TO A CREDIT AGAINST THE PRICE IN AN AMOUNT EQUAL TO THE PURCHASER'S SHARE OF THE PROCEEDS.

14-712.

(Over)

(A) A BROKER APPOINTED UNDER § 14-711(B) OF THIS SUBTITLE TO OFFER PROPERTY FOR OPEN-MARKET SALE SHALL FILE A REPORT WITH THE COURT NOT LATER THAN 7 DAYS AFTER RECEIVING AN OFFER TO PURCHASE THE PROPERTY FOR AT LEAST THE VALUE DETERMINED UNDER § 14-707 OR § 14-711 OF THIS SUBTITLE.

(B) A REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL CONTAIN THE FOLLOWING INFORMATION:

(1) A DESCRIPTION OF THE PROPERTY TO BE SOLD TO EACH BUYER;

(2) THE NAME OF EACH BUYER;

(3) THE PROPOSED PURCHASE PRICE;

(4) THE TERMS AND CONDITIONS OF THE PROPOSED SALE, INCLUDING THE TERMS OF ANY OWNER FINANCING;

(5) THE AMOUNTS TO BE PAID TO LIENHOLDERS;

(6) A STATEMENT OF CONTRACTUAL OR OTHER ARRANGEMENTS OR CONDITIONS OF THE BROKER'S COMMISSION; AND

(7) OTHER MATERIAL FACTS RELEVANT TO THE SALE.

14-713.

THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. § 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE § 101(C) OF THAT ACT, 15

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U.S.C. § 7001(C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN § 103(B) OF THAT ACT, 15 U.S.C. § 7003(B).”

Senator Augustine's Testimony for SB 92 Maryland U

Uploaded by: Malcolm Augustine

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MALCOLM AUGUSTINE
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Prince George's County

Finance Committee

Energy and Public Utilities Subcommittee



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Senate Chair, Joint Committee on the
Management of Public Funds

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.

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Position: FAV

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February 1, 2022

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

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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