

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Uniform Partition of Heirs Property Act.

Section 2. Definitions. In this Act:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this State but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under Section 6 or 10 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

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

(B) one or more of the cotenants acquired title from a relative or, if a cotenant is an entity, from a relative of a beneficiary, shareholder, partner, or member of the entity, whether such relative is living or deceased; and

(C) Any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by a cotenant who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) "Fair market value" means the cash price at which the heirs property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(7) "Partition by sale" means a court-ordered sale of all or a portion of the heirs property conducted under Section 10.

(8) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

(9) "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.

(10) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than this Act.

Section 3. Applicability; relation to other law.

(a) This Act applies to partition actions filed on or after the effective date of this Act.

(b) In an action to partition real property under Article XVII of the Code of Civil Procedure the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this Act unless all of the cotenants otherwise agree in a record.

(c) This Act supplements Article XVII of the Code of Civil Procedure and, if an action is governed by this Act, replaces provisions of Article XVII of the Code of Civil Procedure that are inconsistent with this Act.

Section 4. Service; notice by posting.

(a) This Act does not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than

10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Section 5. Commissioners. If the court appoints a commissioner pursuant to Article XVII of the Code of Civil Procedure, the commissioner, in addition to the requirements and disqualifications applicable to commissioners in Article XVII of the Code of Civil Procedure, must be disinterested and impartial and not a party to or a participant in the action.

Section 6. Determination of value.

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

(b) 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.

(c) If the court determines that the evidentiary value of

an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and shall order the plaintiff to send notice to the parties of the value.

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

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall order the plaintiff to 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 clerk's office; 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.

(f) If an appraisal is filed with the court pursuant to subsection (d), 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 (e), whether or not an objection to the appraisal is filed under subsection (e) (3). In addition to the

court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and order the plaintiff to send notice to all of the parties of the value and a cotenant's buyout rights as provided in Section 7.

Section 7. Cotenant buyout.

(a) If any cotenant requested partition by sale, after the determination of value under Section 6, the court shall order the plaintiff to 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.

(b) Not later than 45 days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it 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 Section 6 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), 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 of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall 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 and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall order the plaintiff to send notice to all the parties of that fact and resolve the partition action under Section 8(a) and (b).

(e) If the court sends notice to the parties under subsection (d)(1) or (2), 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 to the clerk of court or as otherwise ordered by the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price to the clerk of court or as otherwise ordered by the court, the court shall issue an order

reallocating all the interests of the cotenants and disburse the amounts held to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 8(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall order the plaintiff to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than 20 days after the court gives notice pursuant to subsection (e) (3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 8(a) and (b) as if the interests of

the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall 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. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held to the persons entitled to them, and promptly refund any excess payment held by the clerk of court or as ordered by the court.

(g) Not later than 45 days after notice is sent to the parties pursuant to subsection (a), 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), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as 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) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 6.

Section 8. Partition alternatives.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7, or if after conclusion of the buyout under Section 7, 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 Section 9, finds that partition in kind will result in manifest prejudice to the cotenants as a group. 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), the court shall order partition by sale pursuant to Section 10 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), 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 pursuant to Section 7, a part of the property representing the combined interests of those cotenants as determined by the court.

Section 9. Consideration for partition in kind.

(a) In determining under Section 8(a) whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs 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) a cotenant's sentimental attachment 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 have contributed to the physical improvement, maintenance, or upkeep of the property;

(7) the tax consequences; and

(8) any other relevant factor.

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

Section 10. Open-market sale, sealed bids, or auction.

(a) If the court orders a sale of heirs property, the sale must 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) 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 this State to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) 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 Section 11; and

(2) the sale may be completed in accordance with state law other than this Act.

(d) If the broker appointed under subsection (b) 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. If the court orders an auction, the auction must be conducted under Article XVII of the Code of Civil Procedure.

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

Section 11. Report of open-market sale.

(a) Unless required to do so within a shorter time by Article XVII of the Code of Civil Procedure, a broker appointed under Section 10(b) to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 6 or 10.

(b) The report required by subsection (a) must 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.

Section 12. Costs. In all proceedings for the partition of heirs property, the court shall apportion the costs of the proceedings, including a reasonable fee for the plaintiff's attorney, among the parties in interest in the action, as the court deems just and equitable. In determining the just and equitable apportionment of the costs and attorney's fees, the court may consider, among other things, the good faith attempt of the parties to agree prior to the initiation of the complaint. If any defendant interposes a good and substantial defense to the complaint, the party or parties making such substantial defense shall recover their costs against the plaintiff according to justice and equity.

Section 60. The Code of Civil Procedure is amended by changing Sections 17-101, 17-102, 17-105, and 17-106 as follows:

(735 ILCS 5/17-101) (from Ch. 110, par. 17-101)

Sec. 17-101. Compelling partition. When lands, tenements, or hereditaments are held in joint tenancy or tenancy in common, other than in accordance with the Uniform Partition of

Heirs Property Act, or other form of co-ownership and regardless of whether any or all of the claimants are minors or adults, any one or more of the persons interested therein may compel a partition thereof by a verified complaint in the circuit court of the county where the premises or part of the premises are situated. If lands, tenements or hereditaments held in joint tenancy or tenancy in common are situated in 2 or more counties, the venue may be in any one of such counties, and the circuit court of any such county first acquiring jurisdiction shall retain sole and exclusive jurisdiction. Ownership of an interest in the surface of lands, tenements, or hereditaments by a co-owner of an interest in minerals underlying the surface does not prevent partition of the mineral estate. This amendatory Act of the 92nd General Assembly is a declaration of existing law and is intended to remove any possible conflicts or ambiguities, thereby confirming existing law pertinent to the partition of interests in minerals and applies to all actions for the partition of minerals now pending or filed on or after the effective date of this amendatory Act of the 92nd General Assembly. Nothing in this amendatory Act of the 92nd General Assembly shall be construed as allowing an owner of a mineral interest in coal to mine and remove the coal by the surface method of mining without first obtaining the consent of all of the owners of the surface to the mining and removal of coal by the surface method of mining. Ownership of an interest in minerals by a co-owner

of an interest in the surface does not prevent partition of the surface. The ownership of an interest in some, but not all, of the mineral estate by a co-owner of an interest in other minerals does not prevent the partition of the co-owned mineral estate.

(Source: P.A. 92-379, eff. 8-16-01; 93-925, eff. 8-12-04.)

(735 ILCS 5/17-102) (from Ch. 110, par. 17-102)

Sec. 17-102. Complaint. The verified complaint shall particularly describe the premises sought to be divided, and shall set forth the interests of all parties interested therein, so far as the same are known to the plaintiffs, including tenants for years or for life, and of all persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the same are known to the plaintiffs, and shall ask for the division and partition of the premises according to the respective rights of the parties interested therein, or in accordance with the Uniform Partition of Heirs Property Act, ~~if a division and partition of the same cannot be made without manifest prejudice to the owners, that a sale thereof be made and the proceeds divided according to the respective rights of the parties.~~

(Source: P.A. 82-280.)

(735 ILCS 5/17-105) (from Ch. 110, par. 17-105)

Sec. 17-105. Judgment. The court shall ascertain and declare the rights, titles and interest of all the parties in such action, the plaintiffs as well as the defendants, and shall enter judgment according to the rights of the parties. After entry of judgment adjudicating the rights, titles, and interests of the parties, the court upon further hearing shall determine whether or not the premises or any part thereof can be divided among the parties without manifest prejudice to the parties in interest. If the court finds that a division can be made, then the court shall enter further judgment fairly and impartially dividing the premises among the parties with or without owelty. If the court finds that the whole or any part of the premises sought to be partitioned cannot be divided without manifest prejudice to the owners thereof and is not governed by the Uniform Partition of Heirs Property Act, then the court shall order the premises not susceptible of division to be sold at public sale in such manner and upon such terms and notice of sale as the court directs. If the court orders the sale of the premises or any part thereof, the court shall fix the value of the premises to be sold. No sale may be approved for less than two-thirds of the total amount of the valuation of the premises to be sold. If it appears to the court that any of the premises will not sell for two-thirds of the amount of the valuation thereof, the court upon further hearing may either revalue the premise and approve the sale or

order a new sale.

(Source: P.A. 93-925, eff. 8-12-04.)

(735 ILCS 5/17-106) (from Ch. 110, par. 17-106)

Sec. 17-106. Appointment of commissioner and surveyor. The court in its discretion, sua sponte, or on the motion of any interested party, must ~~may~~ appoint a disinterested commissioner who, subject to direction by the court, shall report to the court in writing under oath as to whether or not the premises are subject to division without manifest prejudice to the rights of the parties and, if so, report how the division may be made. The court may authorize the employment of a surveyor to carry out or assist in the division of the premises. The fees and expenses of the commissioner and of the surveyor and the person making the sale shall be taxed as costs in the proceedings.

(Source: P.A. 93-925, eff. 8-12-04.)

Section 99. Effective date. This Act takes effect upon becoming law.