



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

RHODE ISLAND COMMISSION ON UNIFORM STATE LAWS

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House Judiciary Committee
Rhode Island House of Representatives
Via Email: housejudiciary@rilegislature.gov

Re: Uniform Partition of Heirs Property Act – Testimony in Support of HB 7210

Dear Chair McEntee, Vice Chair Knight, Vice Chair Dawson, and Members of the Rhode Island House Judiciary Committee,

Thank you for the opportunity to testify in support of House Bill 7210 which adopts the Uniform Partition of Heirs Property Act. I am a Rhode Island Legislature-appointed member of the Uniform Law Commission (ULC). A copy of the Act, as well as other supporting materials can be found on the Uniform Law Commission's website, uniformlaws.org. I have also submitted these materials to the House electronically.

The Uniform Law Commission (ULC) is a state-supported organization that was established in 1892 and provides states with well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC commissioners are practicing lawyers, judges, legislators and legislative staff, and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands. ULC commissioners donate thousands of hours of legal work, without compensation, to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The Partition of Heirs Property Act (the “Act”) aims to protect tenants in common from predatory partition actions that can result in the loss of the entire parcel of land. To understand the Act, we need to define 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.

Next, “heirs’ property,” which is defined in this bill as property held as a tenancy in common, where (1) there is no written partition agreement; (2) at least one cotenant acquired title from a relative; and (3) 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 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 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 their property and ensure their land remains under family control. However, 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 small piece of land in Rhode Island. 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 land, 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 will be unrelated to the two other siblings and likely has no personal attachment to the land.

Under current law, the new cotenant can ask the court to partition the land. 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 remaining 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. Throughout 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 land 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, typically 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 decide 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.

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 Rhode Islanders 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.

I thank you for your time, and respectfully urge the Committee to report favorably on House Bill 7210.

Sincerely,

Patrick A. Guida