



BOSTON COLLEGE

LAW SCHOOL

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Representative Carol Hagan McEntee
Chair, Rhode Island House Judiciary Committee
State of Rhode Island General Assembly
82 Smith Street
Providence, Rhode Island 02903

Good afternoon Chair McEntee and the other members of the Rhode Island House Judiciary Committee.

I am Professor Thomas W. Mitchell, a law professor at Boston College Law School, where I hold the Robert F. Drinan, S.J. Endowed Chair and where I am the founding director of the Initiative on Land, Housing & Property Rights. I served as the reporter (principal drafter) of the Uniform Partition of Heirs' Property Act (UPHPA) and I am here to testify in support of H.B. 7210, a bill relating to the UPHPA.

At its core, the UPHPA is a uniform act that addresses the devastating impact of the application of an arcane property law known as partition law, which has resulted in substantial property loss among many so-called heirs' property owners and the stripping of generational wealth from these families. Heirs' property represents a subset of tenancy-in-common property, the most prevalent and unstable form of common real property ownership in the United States. Partition law makes tenancy-in-common ownership very unstable because any one of the cotenants (common owners) can file a partition action requesting a court to order a forced sale of the entire property, no matter how small a fractional interest they own and no matter how recently they acquired their fractional interest. In terms of heirs' property, the person seeking the forced sale can be a family member who owns an interest or a non-family member who acquired their interest from a family member, including real estate speculators and so-called heir hunters.

The UPHPA has been an incredibly successful uniform act. At this time, 26 states and other jurisdictions have enacted the UPHPA into law, with half of the enactments coming from so-called red states and the other half coming from blue states/jurisdictions. These states include Connecticut, New York, and New Jersey. Massachusetts, Pennsylvania, and Kentucky are actively considering UPHPA bills at this time.

The UPHPA significantly enhances the due process and private property rights of vulnerable families who own heirs' property, families that represent many racial and ethnic groups, though Black and other disadvantaged families of color disproportionately own such property. The UPHPA protects vulnerable heirs' property owners in two overarching ways. First, it does so by increasing the ability of families to maintain ownership of their property when a co-owner petitions

a court to order a forced sale of the entire property against the wishes of some or all of the other common owners. Second, it does so by protecting the real estate-related generational wealth of families in those instances in which a court orders a forced sale of their family property.

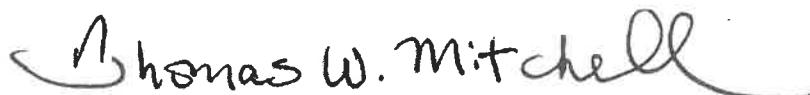
Generational wealth almost always is lost as a result of court-ordered partition sales. This occurs because the judicial auction sales that often are used to sell such tenancy-in-common property usually yield prices well below market value and sometimes even fire sale prices. The sales by private contract that courts in Rhode Island also use when courts order partition sales do not require that the property be sold for its fair market appraised value but instead for a sum fixed by the court. Such a sale, though often better than a public auction, is suboptimal.

The UPHPA has three essential pillars that provide heirs' property owners with enhanced property rights protections, none of which are features of the current partition law in Rhode Island. First, if any cotenant petitions a court for a court-ordered partition sale, the other cotenants are afforded the right at the beginning of the litigation to buy out the fractional interest of the cotenant that seeks the forced sale. Second, the UPHPA adds substance to the preference most states such as Rhode Island have for a physical division of property in a partition action by using a "totality of the circumstances" test that includes both economic and non-economic factors. Third, the UPHPA's default sales procedure is an "open-market sale," which is a procedure designed to mimic a sale between a willing seller and a willing buyer. These sales are conducted by court-appointed real estate brokers who list and market heirs' property that courts order sold just as they list and market properties in their normal inventories. As such, the sales are designed to yield sales prices that approximate market value.

In the states that have enacted it into law, the UPHPA has been working very well and as intended. In many states, there has been a significant reduction in the number of partition actions that have been filed as so-called heirs' hunters and real estate speculators have realized that they no longer can acquire heirs' property for fire sale prices. As a result of the open-market sales procedure, we have heard from lawyers in several states that partition sales under the UPHPA are yielding substantially higher prices, often between 30% and 100% more than partition sales formerly yielded. Cases litigated under the UPHPA also have not been taking significantly more time for courts to resolve, and they often have been taking less time to resolve.

For the foregoing reasons, I respectfully ask the Committee to recommend passage of House Bill 7210.

Sincerely,



Thomas W. Mitchell
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Founding Director, Initiative on Land, Housing & Property Rights
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