



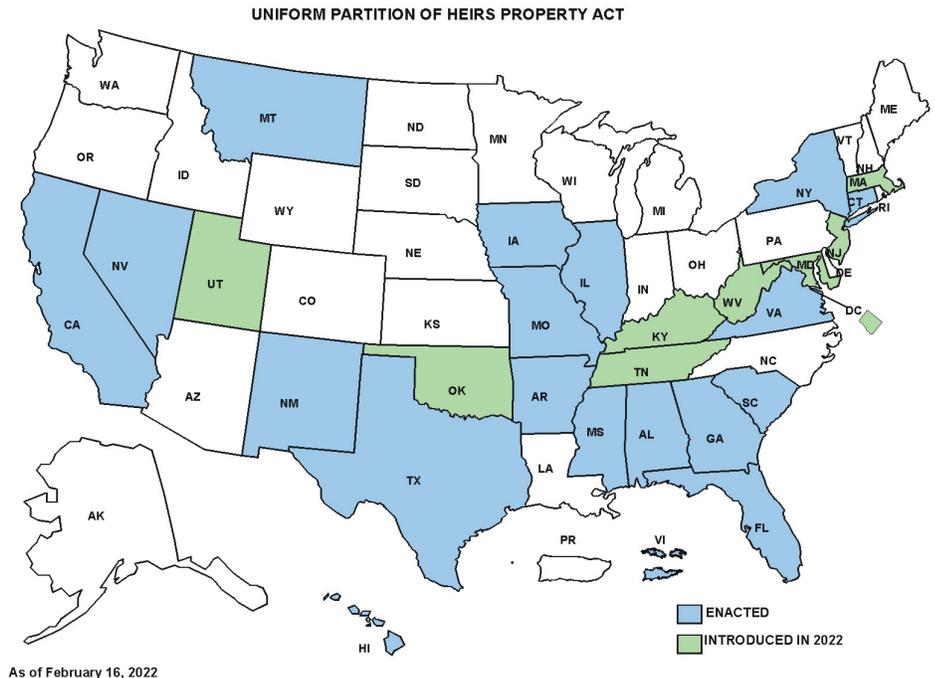
Statement of Benjamin Orzeske, Chief Counsel of the Uniform Law Commission, to the Maryland House Environment and Transportation Committee in support of House Bill 777 to adopt the Partition of Real Property Act, February 22, 2022.

Chair Barve, Vice-Chair Stein and Members of the Committee:

Thank you for considering Delegate Rosenberg’s legislation to enact the Partition of Heirs Property Act in Maryland. This bill is largely 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. 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.

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.

“Heirs’ property” is tenancy-in-common property owned by heirs of the original owner. If the property passes through multiple generations of the same family, the number of heir-owners can quickly multiply. 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



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.

percentage of their total wealth. Family members might live on the property, or use it for income from farming or other commercial uses.

This bill will protect 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.

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 or no 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.

HB 777 addresses this issue with a series of due process protections for tenancy-in-common 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.

The Uniform Law Commission worked with representatives from the Maryland State Bar Association to adapt the Uniform Partition of Heirs' Property Act so that it covers all partitions, rather than only those involving heir's property. The Virginia Legislature did something similar when it revised that state's partition action in 2020.

In closing, you should know that the 2018 federal Farm Bill includes 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 Uniform Partition of Heirs Property Act. We expect HB 777 will qualify Maryland property owners for these benefits.

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 HB 777 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.