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February 18, 2022

The Honorable Kumar Barve
Chair, House Environment
and Transportation Committee
Room 251, House Office Building
Annapolis, MD 21401

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Room 101 House Office Building
Annapolis, MD 20401

RE: HB 0777 – Support

Dear Chair Barve, Chair Clippinger, and Committee Members:

Thank you for this opportunity to testify in strong support of the Partition of Property Act, House Bill 777. While I am here today in my individual capacity, my colleague Rachel Jennings and I have been working for the past year to support enactment of the model act on which this bill is based, the Uniform Partition of Heirs Property Act (“UPHPA”), in both Maryland, where I have lived for nearly 60 years, and Washington, DC, where I have long made my professional home. Virginia enacted the UPHPA in 2020, as have 17 other states and one U.S. territory.

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 members of the African-American community and other disadvantaged groups.

My involvement with the UPHPA stemmed from my service on the Equity Committee of DC Mayor Muriel Bowser’s ReOpen DC Advisory Group. Inspired by that service, I was on the lookout for a concrete way to address systemic inequities that impact vulnerable communities. I read an article about Professor Thomas Mitchell’s work on heirs property – a subset of family-owned tenancy-in-common property – and his role as drafter of the UPHPA, and this was something that, it seemed to me, cried out

to be addressed here in my own back yard. Coincidentally, Professor Mitchell and I had overlapped as young attorneys at Covington & Burling many years ago. I contacted Professor Mitchell and told him that I wanted to assemble coalitions in Maryland and DC to pursue enactment of the UHPA. With the benefit of his expertise and national perspective, Ms. Jennings and I have helped assemble coalitions of public interest, business, and civic organizations to support passage of the UHPA in these jurisdictions.

Current law does not provide adequate protection for owners of tenancy-in-common property. Under a tenancy-in-common, each cotenant 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 cotenant 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 cotenants. These partition-by-sales often occur quickly through auctions on the courthouse steps, and garner sales prices well below market values. Cotenants who have no desire to sell are 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. Resident cotenants may lose businesses located on the property, or farm income generated from working the land, causing further economic damage.

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 auction 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, 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. Many often assume that their property can only be sold with the unanimous consent of all the cotenants (or at least a supermajority of them) and are shocked to discover when a partition action involving their property is being adjudicated that one cotenant acting alone, in this case the speculator with an acquired share, 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 and connections to pursue those options (including, for example, existing relationships with legal advisors), 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 property owners, 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 Maryland UPHPA offers a concrete way to address systemic inequities that inevitably result from current partition law without removing the agency of any cotenant of the property to extinguish his or her own interest in the property. Its legal changes are modest, but its equity impact is large. Under the UPHPA, any cotenant still has the right to petition the court for a partition action. The other cotenants, however, have the right to buy out any cotenant 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 cotenants, and disincentivizes speculators from targeting vulnerable property owners for unjust windfalls.

Enacting the UPHPA would benefit the public interest more broadly as well. The UPHPA provides an avenue for clarifying the title of real property that ensures cotenants 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 owners" in states that enact the UPHPA automatically qualify for a farm number, providing access to a host of USDA programs, including lending and disaster relief programs. These resources 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 UPHPA 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 these committees have taken up this important issue. I and others working for heirs property reform appreciate the leadership of Committee Chairs Barve and Clippinger in holding this hearing and bill co-sponsors Delegates Rosenberg and Stein in sponsoring this legislation. The UPHPA 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. I am proud that my law firm, Gilbert LLP, stands squarely behind this bill and has donated legal services on a *pro bono* basis to allow Ms. Jennings and me to devote our time and energy to this effort.

Thank you for your time and your focus on this important matter.

The Honorable Kumar Barve & The Honorable Luke Clippinger
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GILBERT LLP

Very respectfully,

A handwritten signature in black ink, appearing to be 'Richard Shore', written over a horizontal line.

Richard Shore

cc: The Honorable Samuel I. Rosenberg
The Honorable Dana Stein