

1 HB251
2 155634-1
3 By Representative Black
4 RFD: Judiciary
5 First Read: 15-JAN-14

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8 SYNOPSIS: This act creates the Alabama Uniform
9 Partition of Heirs Property Act.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 To create the Alabama Uniform Partition of Heirs
16 Property Act.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the Alabama Uniform Partition of Heirs Property Act.

20 Section 2. For the purposes of this act, the
21 following terms shall have the following meanings:

22 (1) ASCENDANT. An individual who precedes another
23 individual in lineage, in the direct line of ascent from the
24 other individual.

25 (2) COLLATERAL. An individual who could inherit
26 from, or whose estate could descend to, the related individual

1 under the law of intestate succession of Alabama but who is
2 not the other individual's ascendant or descendant.

3 (3) DESCENDANT. An individual who follows another
4 individual in lineage, in the direct line of descent from the
5 other individual.

6 (4) DETERMINATION OF VALUE. A court order
7 determining the fair market value of heirs property under
8 Section 6 or Section 10 or adopting the valuation of the
9 property agreed to by all cotenants.

10 (5) HEIRS PROPERTY. Real property held in tenancy in
11 common which satisfies all of the following requirements as of
12 the filing of a partition action:

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

15 (B) One or more of the cotenants acquired title from
16 a relative, whether living or deceased; and

17 (C) Any of the following applies:

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

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

23 (iii) Twenty percent or more of the cotenants are
24 relatives.

25 (6) PARTITION BY SALE. A court-ordered sale of the
26 entire heirs property, whether by auction, sealed bids, or
27 open market sale conducted under Section 10.

1 (7) PARTITION IN KIND. The division of heirs
2 property into physically distinct and separately titled
3 parcels.

4 (8) RECORD. Information that is inscribed on a
5 tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form.

7 (9) RELATIVE. An ascendant, descendant, or
8 collateral or an individual otherwise related to another
9 individual by blood, marriage, adoption, or law of this state
10 other than this act.

11 Section 3. (a) This act applies to partition actions
12 filed on or after January 1, 2015.

13 (b) In an action to partition real property under
14 Chapter 6 of Title 35, Code of Alabama 1975, the court shall
15 determine whether the property is heirs property. If the court
16 determines that the property is heirs property, the property
17 shall be partitioned under this act unless all of the
18 cotenants otherwise agree in a record.

19 (c) This act supplements Chapter 6 of Title 35, Code
20 of Alabama 1975, and, if an action is governed by this act,
21 replaces those provisions of Chapter 6 of Title 35, Code of
22 Alabama 1975, that are inconsistent with this act.

23 (d) This act does not supplant or otherwise change
24 the provisions for fees as a part of the cost under Section
25 34-3-60, Code of Alabama 1975.

1 Section 4. (a) Service of process shall be in
2 accordance with Section 35-6-20 and Section 35-6-25, Code of
3 Alabama 1975.

4 (b) When service of process is obtained by
5 publication and the court determines that the property may be
6 heirs property, the plaintiff, not later than 10 days after
7 the court's determination, shall post a conspicuous and
8 durable sign of at least 11 x 17 inches in size on the
9 property that is the subject of the action. The sign shall
10 state that the action has commenced and identify the name and
11 address of the court and the common designation by which the
12 property is known. The court may require the plaintiff to
13 publish on the sign the name of the plaintiff and the known
14 defendants.

15 Section 5. If the court appoints commissioners
16 pursuant to Section 35-6-45 and Section 35-6-62, Code of
17 Alabama 1975, each commissioner, in addition to the
18 requirements and disqualifications applicable to commissioners
19 in Sections 35-6-45, 35-6-46, and 35-6-62, shall be
20 disinterested and impartial and not a party to or a
21 participant in the action.

22 Section 6. (a) Except as otherwise provided in
23 subsection (b) and subsection (c), if the court determines
24 that the property that is the subject of a partition action is
25 heirs property, the court shall determine the fair market
26 value of the property by ordering an appraisal pursuant to
27 subsection (d).

1 (b) If all cotenants have agreed to the value of the
2 property or to another method of valuation, the court shall
3 adopt that value or the value produced by the agreed method of
4 valuation.

5 (c) If the court determines that the evidentiary
6 value of an appraisal is outweighed by the cost of the
7 appraisal, the court, after an evidentiary hearing, shall
8 determine the fair market value of the property and send
9 notice to the parties of the value.

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

16 (e) If an appraisal is conducted pursuant to
17 subsection (d), not later than 10 days after the appraisal is
18 filed, the court shall send notice to each party with a known
19 address, stating all of the following:

20 (1) The appraised fair market value of the property.

21 (2) That the appraisal is available at the clerk's
22 office.

23 (3) That a party may file with the court an
24 objection to the appraisal not later than 30 days after the
25 notice is sent, stating the grounds for the objection.

26 (f) If an appraisal is filed with the court pursuant
27 to subsection (d), the court shall conduct a hearing to

1 determine the fair market value of the property not sooner
2 than 30 days after a copy of the notice of the appraisal is
3 sent to each party under subsection (e), whether or not an
4 objection to the appraisal is filed under subdivision (3) of
5 subsection (e). In addition to the court-ordered appraisal,
6 the court may consider any other evidence of value offered by
7 a party.

8 (g) After a hearing under subsection (f), but before
9 considering the merits of the partition action, the court
10 shall determine the fair market value of the property and send
11 notice to the parties of the value.

12 Section 7. (a) In each petitioner's initial pleading
13 in a partition action, the petitioner shall state whether the
14 petitioner requests partition by sale. If the petitioner fails
15 to so state, the petitioner shall be deemed to have not
16 requested partition by sale.

17 (b) In each cotenant's initial responsive pleading,
18 the cotenant shall state whether the cotenant requests
19 partition by sale.

20 (1) If a cotenant files a responsive pleading but
21 fails to so state, the cotenant shall be deemed to have not
22 requested partition by sale.

23 (2) If a guardian ad litem is appointed to represent
24 one or more cotenants including, but not limited to, unknown,
25 unlocatable, and legally incapacitated cotenants, the guardian
26 ad litem may, but is not required to, state whether or not
27 such cotenant requests partition by sale, and the guardian ad

1 litem shall have no liability for making or failing to make
2 the election. If a guardian ad litem files a responsive
3 pleading but fails to so state, such cotenant shall be deemed
4 to have not requested partition by sale.

5 (c) If a cotenant is named as a defendant and served
6 with the complaint but does not appear in the action, the
7 cotenant shall be deemed to have not requested partition by
8 sale, unless the court approves a request to authorize the
9 sale of the cotenant's interest as set forth in subdivisions
10 (1) to (3), inclusive.

11 (1) Not later than 14 days after the court sends
12 notice to the parties pursuant to subsection (e) or
13 subdivision (1) of subsection (f), any cotenant entitled to
14 buy an interest under this section may request the court to
15 authorize the sale pursuant to this section of the interests
16 of cotenants named as defendants and served with the complaint
17 but not appearing in the action.

18 (2) If the court receives a timely request under
19 subdivision (1), the court, after a hearing, may deny the
20 request or may authorize the requested sale of the interests
21 of any or all cotenants named as defendants and served with
22 the complaint who did not appear in the action.

23 (3) If the court approves the request made pursuant
24 to subdivision (1) with respect to any cotenant who was named
25 as a defendant and served with the complaint but did not
26 appear in the action, that cotenant shall be deemed to have
27 requested partition by sale for purposes of this section, and

1 shall be treated for all purposes hereunder as having
2 requested partition by sale.

3 (d) If no cotenant, including the petitioner, has
4 requested partition by sale, the court shall determine whether
5 the property can be partitioned in kind pursuant to
6 subsections (a), (c), and (d) of Section 8 and Section 9. If
7 the court determines the property cannot be partitioned in
8 kind, the court shall dismiss the action without prejudice.

9 (e) If any cotenant, including the petitioner, has
10 requested partition by sale, after the determination of value
11 under Section 6, the court shall send notice to the parties
12 that any cotenant except a cotenant that requested partition
13 by sale may buy all the interests of the cotenants that
14 requested partition by sale.

15 (1) Not later than 30 days after the notice is sent,
16 any cotenant except a cotenant that requested partition by
17 sale may give notice to the court that it elects to buy all
18 the interests of the cotenants that requested partition by
19 sale.

20 (2) The purchase price for the interests of a
21 cotenant that requested partition by sale shall be the value
22 of the entire parcel determined under Section 6 multiplied by
23 the cotenant's fractional ownership of the entire parcel.

24 (3) After expiration of the period in subdivision
25 (1), if only one cotenant elects to buy all the interests of
26 the cotenants that requested partition by sale, the court
27 shall notify all the parties of that fact and of the price to

1 be paid by the electing cotenant calculated pursuant to
2 subdivision (2). If more than one cotenant elects to buy all
3 the interests of the cotenants that requested partition by
4 sale, the court shall allocate the right to buy those
5 interests among the electing cotenants based on each electing
6 cotenant's existing fractional ownership of the entire parcel
7 divided by the total existing fractional ownership of all
8 cotenants electing to buy and send notice to all the parties
9 of that fact and of the price to be paid by each electing
10 cotenant calculated pursuant to subdivision (2).

11 (4) The court shall set a date, not sooner than 60
12 days after the end of the applicable notice period in
13 subdivision (1), by which electing cotenants must pay their
14 apportioned price into the court.

15 (A) If all electing cotenants timely pay their
16 apportioned price into court, the court shall issue an order
17 reallocating all the interests of the cotenants and disburse
18 the amounts held by the court to the persons entitled to them,
19 and the court shall thereafter enter such other orders as may
20 be appropriate and dismiss the action without prejudice.

21 (B) If one or more but not all of the electing
22 cotenants fail to pay their apportioned price on time, the
23 court shall give notice to the electing cotenants that paid
24 their apportioned price of the remaining interests of the
25 cotenants that requested partition by sale and the total price
26 for those interests.

1 (C) If no electing cotenant timely pays its
2 apportioned price, the court shall proceed according to
3 subsection (f) as if the interests of the cotenants that
4 requested partition by sale were not purchased pursuant to
5 this subsection.

6 (5) Not later than 20 days after the court gives
7 notice pursuant to paragraph (B) of subdivision (4), any
8 cotenant that paid may elect to purchase all of the remaining
9 interests of the cotenants that requested partition by sale by
10 paying the entire price into the court.

11 (A) If only one cotenant timely pays the entire
12 price for the remaining interests of the cotenants that
13 requested partition by sale, the court shall issue an order
14 reallocating the remaining interests of the cotenants that
15 requested partition by sale to that cotenant. The court shall
16 issue promptly an order reallocating the interests of all of
17 the cotenants and disburse the amounts held by it to the
18 persons entitled to them.

19 (B) If more than one cotenant timely pays the entire
20 price for the remaining interests of the cotenants that
21 requested partition by sale, the court shall reapportion the
22 remaining interests of the cotenants that requested partition
23 by sale among those paying cotenants, based on each paying
24 cotenant's original fractional ownership of the entire parcel
25 divided by the total original fractional ownership of all
26 cotenants that paid the entire price for the remaining
27 interests of the cotenants that requested partition by sale.

1 The court shall issue promptly an order reallocating all of
2 the cotenants' interests, disburse the amounts held by it to
3 the persons entitled to them, and promptly refund any excess
4 payment held by the court.

5 (C) If no cotenant pays the entire price for the
6 remaining interests of the cotenants that requested partition
7 by sale, the court shall proceed according to subsection (f)
8 as if the interests of the cotenants that requested partition
9 by sale were not purchased pursuant to subsection (f).

10 (f) If no cotenant elects pursuant to subsection (e)
11 to buy all the interests of the cotenants that requested
12 partition by sale, the court shall proceed as follows:

13 (1) The court shall send notice to the parties that
14 no cotenant elected pursuant to subsection (e) to buy all the
15 interests of the cotenants that requested partition by sale
16 and that any cotenant that requested partition by sale may buy
17 all the interests of the other cotenants that requested
18 partition by sale.

19 (2) Not later than 30 days after the notice is sent
20 under subdivision (1), any cotenant that requested partition
21 by sale may give notice to the court that it elects to buy all
22 the interests of the other cotenants that requested partition
23 by sale.

24 (3) Notwithstanding the cotenant's prior request for
25 partition by sale, any cotenant making an election to buy
26 pursuant to this subdivision, for purposes of this subsection,
27 shall be deemed to have not requested partition by sale.

1 (4) The purchase price for the interest of a
2 cotenant that requested partition by sale shall be the value
3 of the entire parcel determined under Section 6 multiplied by
4 the cotenant's fractional ownership of the entire parcel.

5 (5) If only one cotenant elects to buy all the
6 interests of the other cotenants that requested partition by
7 sale, the court shall notify all the parties of that fact and
8 of the price to be paid by the electing cotenant calculated
9 pursuant to subdivision (4). If more than one cotenant elects
10 to buy all the interests of the other cotenants that requested
11 partition by sale, the court shall allocate the right to buy
12 those interests among the electing cotenants based on each
13 electing cotenant's existing fractional ownership of the
14 entire parcel divided by the total existing fractional
15 ownership of all cotenants electing to buy and send notice to
16 all the parties of that fact and of the price to be paid by
17 each electing cotenant calculated pursuant to subdivision (4).

18 (6) The court shall set a date, not sooner than 60
19 days after the end of the applicable notice period in
20 subdivision (1), by which electing cotenants must pay their
21 apportioned price into the court.

22 (A) If all electing cotenants timely pay their
23 apportioned price into court, the court shall issue an order
24 reallocating all the interests of the cotenants and disburse
25 the amounts held by the court to the persons entitled to them,
26 and the court shall thereafter enter such other orders as may
27 be appropriate and dismiss the action without prejudice.

1 (B) If one or more but not all of the electing
2 cotenants fail to pay their apportioned price on time, the
3 court shall give notice to the electing cotenants that paid
4 their apportioned price of the remaining interests of the
5 cotenants that requested partition by sale and the total price
6 for those interests.

7 (C) If no electing cotenant timely pays its
8 apportioned price, the court shall resolve the partition
9 action under Section 8 to Section 11, inclusive, as if the
10 interests of the cotenants that requested partition by sale
11 were not purchased.

12 (7) Not later than 20 days after the court gives
13 notice pursuant to paragraph (B) of subdivision (6), any
14 cotenant that paid may elect to purchase all of the remaining
15 interests of the cotenants that requested partition by sale by
16 paying the entire price into the court.

17 (A) If only one cotenant timely pays the entire
18 price for the remaining interests of the cotenants that
19 requested partition by sale, the court shall issue an order
20 reallocating the remaining interests of the cotenants that
21 requested partition by sale to that cotenant. The court shall
22 issue promptly an order reallocating the interests of all of
23 the cotenants and disburse the amounts held by it to the
24 persons entitled to them.

25 (B) If more than one cotenant timely pays the entire
26 price for the remaining interests of the cotenants that
27 requested partition by sale, the court shall reapportion the

1 remaining interests of the cotenants that requested partition
2 by sale among those paying cotenants, based on each paying
3 cotenant's original fractional ownership of the entire parcel
4 divided by the total original fractional ownership of all
5 cotenants that paid the entire price for the remaining
6 interests of the cotenants that requested partition by sale.
7 The court shall issue promptly an order reallocating all of
8 the cotenants' interests, disburse the amounts held by it to
9 the persons entitled to them, and promptly refund any excess
10 payment held by the court.

11 (C) If no electing cotenant pays the entire price
12 for the remaining interests of the cotenants that requested
13 partition by sale, the court shall resolve the partition
14 action under Section 8 to Section 11, inclusive, as if the
15 interests of the cotenants that requested partition by sale
16 were not purchased.

17 (8) If no cotenant elects to buy all the interests
18 of the other cotenants that requested partition by sale, the
19 court shall send notice to all the parties of that fact and
20 resolve the partition action under Section 8 to Section 11,
21 inclusive.

22 Section 8. (a) If all the interests of all cotenants
23 that requested partition by sale are not purchased by other
24 cotenants pursuant to Section 7, or, if after conclusion of
25 the buyout under Section 7, a cotenant remains that has
26 requested partition in kind, the court shall order partition
27 in kind unless the court, after consideration of the factors

1 listed in Section 9, finds that partition in kind will result
2 in great prejudice to the cotenants. In considering whether to
3 order partition in kind, the court shall approve a request by
4 two or more parties to have their individual interests
5 aggregated.

6 (b) If the court does not order partition in kind
7 under subsection (a), the court shall order partition by sale
8 pursuant to Section 10 or, if no cotenant requested partition
9 by sale, the court shall dismiss the action.

10 (c) If the court orders partition in kind pursuant
11 to subsection (a), the court may require that one or more
12 cotenants pay one or more other cotenants amounts so that the
13 payments, taken together with the value of the in-kind
14 distributions to the cotenants, will make the partition in
15 kind just and proportionate in value to the fractional
16 interests held.

17 (d) If the court orders partition in kind, the court
18 shall allocate to the cotenants that are unknown, unlocatable,
19 or the subject of a default judgment, if their interests were
20 not bought out pursuant to Section 7, a part of the property
21 or value of the property representing the combined interests
22 of these cotenants as determined by the court.

23 Section 9. (a) In determining under subsection (a)
24 of Section 8 whether partition in kind would result in great
25 prejudice to the cotenants, the court shall consider the
26 following:

1 (1) Whether the heirs property practicably can be
2 divided among the cotenants;

3 (2) Whether partition in kind would apportion the
4 property in such a way that the aggregate fair market value of
5 the parcels resulting from the division would be materially
6 less than the value of the property if it were sold as a
7 whole, taking into account the condition under which a
8 court-ordered sale likely would occur;

9 (3) Evidence of the collective duration of ownership
10 or possession of the property by a cotenant and one or more
11 predecessors in title or predecessors in possession to the
12 cotenant who are or were relatives of the cotenant or each
13 other;

14 (4) A cotenant's sentimental attachment to the
15 property, including any attachment arising because the
16 property has ancestral or other unique or special value to the
17 cotenant;

18 (5) The lawful use being made of the property by a
19 cotenant and the degree to which the cotenant would be harmed
20 if the cotenant could not continue the same use of the
21 property;

22 (6) The degree to which the cotenants have
23 contributed their pro rata share of the property taxes,
24 insurance, and other expenses associated with maintaining
25 ownership of the property or have contributed to the physical
26 improvement, maintenance, or upkeep of the property; and

27 (7) Any other relevant factor.

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

4 Section 10. (a) If the court orders a sale of heirs
5 property, the court shall order that the sale be conducted by
6 one or more of the following methods of sale: Open market sale
7 with or without a broker or brokers; by sealed bids; public
8 auction; or private sale. The court shall choose a method
9 which shall be more economically advantageous and in the best
10 interest of the cotenants as a group.

11 (b) If the court orders an open market sale with or
12 without a broker and the parties, not later than 10 days after
13 the entry of the order, agree on a real estate broker or
14 brokers licensed in this state to offer the property for sale,
15 the court shall appoint the broker or brokers and establish
16 terms of the listing agreement. If the parties do not agree on
17 a broker or brokers, the court shall appoint a disinterested
18 real estate broker licensed in this state to offer the
19 property for sale and shall establish reasonable terms. The
20 broker or brokers shall offer the property for sale in a
21 commercially reasonable manner on the terms and conditions
22 established by the court, at a price no lower than the
23 determination of value unless the court orders otherwise for
24 good cause shown.

25 (c) If, in an open market sale, an offer is obtained
26 to purchase the property for at least the determination of

1 value or the amount ordered by the court and within a
2 reasonable time, not to exceed 180 days:

3 (1) The broker or seller shall comply with the
4 reporting requirements in Section 11; and

5 (2) The sale may be completed in accordance with
6 state law.

7 (d) If, in an open market sale, an offer is not
8 obtained to purchase the property within a reasonable time,
9 not to exceed 180 days, for at least the determination of
10 value or the amount ordered by the court, the court after
11 hearing may:

12 (1) Approve the highest outstanding offer, if any;

13 (2) Order that the property continue to be offered
14 for an additional time, with or without redetermining the
15 value of the property; or

16 (3) Order that the property be sold by sealed bids
17 or at an auction.

18 (e) If the court orders a sale by auction, unless
19 the parties otherwise agree or the court for good cause shown
20 orders otherwise, the auction shall be conducted at the front
21 door or main entrance to the courthouse of the county where
22 the land or a substantial and material part thereof is
23 located. The sale shall be held at a time specified by the
24 court between the legal hours of sale of 11 a.m. to 4 p.m. on
25 the day designated for the exercise of the auction to sell
26 heirs property.

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

5 Section 11. (a) In an open market sale of heirs
6 property, a broker or seller shall file a report with the
7 court not later than seven days after receiving an offer to
8 purchase the property for at least the determination of value
9 or the amount ordered by the court.

10 (b) The report required by subsection (a) shall
11 contain all of the following information:

12 (1) A description of the property to be sold to each
13 buyer.

14 (2) The name of each buyer.

15 (3) The proposed purchase price.

16 (4) The terms and conditions of the proposed sale,
17 including the terms of any owner financing.

18 (5) The amounts to be paid to lien holders.

19 (6) A statement of contractual or other arrangements
20 or conditions of the broker's commission.

21 (7) Other material facts relevant to the sale.

22 Section 12. In applying and construing this uniform
23 act, consideration shall be given to the need to promote
24 uniformity of the law with respect to its subject matter among
25 states that enact the uniform act.

26 Section 13. This act modifies, limits, and
27 supersedes the Electronic Signatures in Global and National

1 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
2 modify, limit, or supersede Section 101(c) of that act, 15
3 U.S.C. Section 7001(c), or authorize electronic delivery of
4 any of the notices described in Section 103(b) of that act, 15
5 U.S.C. Section 7003(b).

6 Section 14. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law, for partition actions
9 filed on or after January 1, 2015.