

By: Representative Clarke

To: Judiciary A

HOUSE BILL NO. 528

1 AN ACT TO CREATE THE "UNIFORM PARTITION OF HEIRS PROPERTY
 2 ACT"; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR APPLICABILITY AND
 3 RELATION TO OTHER LAW; TO ESTABLISH THE PROCEDURES TO BE FOLLOWED
 4 BY THE COURTS IN PARTITIONING REAL PROPERTY THAT IS DETERMINED TO
 5 BE HEIRS PROPERTY; TO REQUIRE A PLAINTIFF IN A PARTITION ACTION
 6 INVOLVING HEIRS PROPERTY TO POST NOTICE OF THE ACTION ON THE
 7 PROPERTY; TO PRESCRIBE THE MANNER BY WHICH THE FAIR MARKET VALUE
 8 OF HEIRS PROPERTY MUST BE DETERMINED; TO AUTHORIZE COTENANTS TO
 9 BUY THE INTEREST OF ANOTHER COTENANT WHO HAS REQUESTED A PARTITION
 10 BY SALE; TO AUTHORIZE ALTERNATIVES TO PARTITION IN KIND THAT WILL
 11 RESULT IN MANIFEST PREJUDICE; TO ESTABLISH PROCEDURES FOR THE SALE
 12 OF HEIRS PROPERTY; TO AMEND SECTION 11-21-5, MISSISSIPPI CODE OF
 13 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
 14 PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1. Short title.** Sections 1 through 13 of this act
 17 are known and may be cited as the "Uniform Partition of Heirs
 18 Property Act."

19 **SECTION 2. Definitions.** As used in this act, the following
 20 words and phrases have the meanings ascribed in this section
 21 unless the context clearly indicates otherwise:

22 (a) "Ascendant" means an individual who precedes
 23 another individual in lineage in the direct line of ascent from
 24 the other individual.



25 (b) "Collateral" means an individual who is related to
26 another individual under the law of intestate succession of this
27 state but who is not the other individual's ascendant or
28 descendant.

29 (c) "Descendant" means an individual who follows
30 another individual in lineage in the direct line of descent from
31 the other individual.

32 (d) "Determination of value" means a court order
33 determining the fair market value of heirs property under Section
34 6 or 10 or adopting the valuation of the property agreed to by all
35 cotenants.

36 (e) "Heirs property" means real property held in
37 tenancy in common which satisfies all of the following
38 requirements as of the filing of a partition action:

39 (i) There is no agreement in a record binding all
40 the cotenants which governs the partition of the property;

41 (ii) One or more of the cotenants acquired title
42 from a relative, whether living or deceased; and

43 (iii) Any of the following applies:

44 1. Twenty percent (20%) or more of the
45 interests are held by cotenants who are relatives;

46 2. Twenty percent (20%) or more of the
47 interests are held by an individual who acquired title from a
48 relative, whether living or deceased; or



49 3. Twenty percent (20%) or more of the
50 cotenants are relatives.

51 (f) "Partition by sale" means a court-ordered sale of
52 the entire heirs property, whether by auction, sealed bids or
53 open-market sale conducted under Section 10.

54 (g) "Partition in kind" means the division of heirs
55 property into physically distinct and separately titled parcels.

56 (h) "Record" means information that is inscribed on a
57 tangible medium or that is stored in an electronic or other medium
58 and is retrievable in perceivable form.

59 (i) "Relative" means an ascendant, descendant or
60 collateral or an individual otherwise related to another
61 individual by blood, marriage, adoption or law of this state other
62 than this act.

63 **SECTION 3. Applicability; relation to other law.** (1) This
64 act applies to partition actions filed on or after July 1, 2018.

65 (2) In an action to partition real property under Chapter
66 21, Title 11, Mississippi Code of 1972, the court shall determine
67 whether the property is heirs property. If the court determines
68 that the property is heirs property, the property must be
69 partitioned under this act unless all of the cotenants otherwise
70 agree in a record.

71 (3) This act supplements Chapter 21, Title 11, Mississippi
72 Code of 1972, and, if an action is governed by this act, replaces
73 provisions that are inconsistent with this act.



74 **SECTION 4. Service; notice by posting.** (1) This act does
75 not limit or affect the method by which service of a complaint in
76 a partition action may be made.

77 (2) If the plaintiff in a partition action seeks an order of
78 notice by publication and the court determines that the property
79 may be heirs property, the plaintiff, not later than ten (10) days
80 after the court's determination, must post and maintain a
81 conspicuous sign on the property that is the subject of the action
82 while the action is pending. The sign must state that the action
83 has commenced and identify the name and address of the court and
84 the common designation by which the property is known. The court
85 may require the plaintiff to publish on the sign the name of the
86 plaintiff and the known defendants.

87 **SECTION 5. Masters.** If the court appoints masters pursuant
88 to Section 11-21-15, each master, in addition to the requirements
89 and disqualifications applicable to masters in Chapter 21, Title
90 11, Mississippi Code of 1972, must be disinterested and impartial
91 and not a party to or a participant in the action.

92 **SECTION 6. Determination of value.** (1) Except as otherwise
93 provided in subsections (2) and (3), if the court determines that
94 the property that is the subject of a partition action is heirs
95 property, the court must determine the fair market value of the
96 property by ordering an appraisal pursuant to subsection (4).

97 (2) If all cotenants have agreed to the value of the
98 property or to another method of valuation, the court must adopt



99 that value or the value produced by the agreed method of
100 valuation.

101 (3) If the court determines that the evidentiary value of an
102 appraisal is outweighed by the cost of the appraisal, the court,
103 after an evidentiary hearing, must determine the fair market value
104 of the property and send notice to the parties of the value.

105 (4) If the court orders an appraisal, the court must appoint
106 a disinterested real estate appraiser licensed in this state to
107 determine the fair market value of the property assuming sole
108 ownership of the fee simple estate. On completion of the
109 appraisal, the appraiser shall file a sworn or verified appraisal
110 with the court.

111 (5) If an appraisal is conducted pursuant to subsection (4),
112 not later than ten (10) days after the appraisal is filed, the
113 court must send notice to each party with a known address,
114 stating:

115 (a) The appraised fair market value of the property;

116 (b) That the appraisal is available at the clerk's
117 office; and

118 (c) That a party may file with the court an objection
119 to the appraisal not later than thirty (30) days after the notice
120 is sent, stating the grounds for the objection.

121 (6) If an appraisal is filed with the court pursuant to
122 subsection (4), the court must conduct a hearing to determine the
123 fair market value of the property not sooner than thirty (30) days



124 after a copy of the notice of the appraisal is sent to each party
125 under subsection (5), whether or not an objection to the appraisal
126 is filed under subsection (5)(c). In addition to the
127 court-ordered appraisal, the court may consider any other evidence
128 of value offered by a party.

129 (7) After a hearing under subsection (6), but before
130 considering the merits of the partition action, the court must
131 determine the fair market value of the property and send notice to
132 the parties of the value.

133 **SECTION 7. Cotenant buyout.** (1) If any cotenant requested
134 partition by sale, after the determination of value under Section
135 6, the court must send notice to the parties that any cotenant,
136 except a cotenant that requested partition by sale, may buy all
137 the interests of the cotenants that requested partition by sale.

138 (2) Not later than forty-five (45) days after the notice is
139 sent under subsection (1), any cotenant, except a cotenant that
140 requested partition by sale, may give notice to the court that it
141 elects to buy all the interests of the cotenants that requested
142 partition by sale.

143 (3) The purchase price for each of the interests of a
144 cotenant that requested partition by sale is the value of the
145 entire parcel determined under Section 6 multiplied by the
146 cotenant's fractional ownership of the entire parcel.

147 (4) After expiration of the period in subsection (2), the
148 following rules apply:



149 (a) If only one (1) cotenant elects to buy all the
150 interests of the cotenants that requested partition by sale, the
151 court must notify all the parties of that fact.

152 (b) If more than one (1) cotenant elects to buy all the
153 interests of the cotenants that requested partition by sale, the
154 court must allocate the right to buy those interests among the
155 electing cotenants based on each electing cotenant's existing
156 fractional ownership of the entire parcel divided by the total
157 existing fractional ownership of all cotenants electing to buy and
158 send notice to all the parties of that fact and of the price to be
159 paid by each electing cotenant.

160 (c) If no cotenant elects to buy all the interests of
161 the cotenants that requested partition by sale, the court must
162 send notice to all the parties of that fact and resolve the
163 partition action under Section 8(1) and (2).

164 (5) If the court sends notice to the parties under
165 subsection (4) (a) or (b), the court must set a date, not sooner
166 than sixty (60) days after the date the notice was sent, by which
167 electing cotenants must pay their apportioned price into the
168 court. After this date, the following rules apply:

169 (a) If all electing cotenants timely pay their
170 apportioned price into court, the court must issue an order
171 reallocating all the interests of the cotenants and disburse the
172 amounts held by the court to the persons entitled to them.



173 (b) If no electing cotenant timely pays its apportioned
174 price, the court must resolve the partition action under Section
175 8(1) and (2) as if the interests of the cotenants that requested
176 partition by sale were not purchased.

177 (c) If one or more but not all of the electing
178 cotenants fail to pay their apportioned price on time, the court,
179 on motion, must give notice to the electing cotenants that paid
180 their apportioned price of the interest remaining and the price
181 for all that interest.

182 (6) Not later than twenty (20) days after the court gives
183 notice pursuant to subsection (5)(c), any cotenant that paid may
184 elect to purchase all of the remaining interest by paying the
185 entire price into the court. After the twenty-day period, the
186 following rules apply:

187 (a) If only one (1) cotenant pays the entire price for
188 the remaining interest, the court must issue an order reallocating
189 the remaining interest to that cotenant. The court shall issue
190 promptly an order reallocating the interests of all of the
191 cotenants and disburse the amounts held by it to the persons
192 entitled to them.

193 (b) If no cotenant pays the entire price for the
194 remaining interest, the court must resolve the partition action
195 under Section 8(1) and (2) as if the interests of the cotenants
196 that requested partition by sale were not purchased.



197 (c) If more than one (1) cotenant pays the entire price
198 for the remaining interest, the court must reapportion the
199 remaining interest among those paying cotenants, based on each
200 paying cotenant's original fractional ownership of the entire
201 parcel divided by the total original fractional ownership of all
202 cotenants that paid the entire price for the remaining interest.
203 The court shall issue promptly an order reallocating all of the
204 cotenants' interests, disburse the amounts held by it to the
205 persons entitled to them, and promptly refund any excess payment
206 held by the court.

207 (7) Not later than forty-five (45) days after the court
208 sends notice to the parties pursuant to subsection (1), any
209 cotenant entitled to buy an interest under this section may
210 request the court to authorize the sale as part of the pending
211 action of the interests of cotenants named as defendants and
212 served with the complaint but that did not appear in the action.

213 (8) If the court receives a timely request under subsection
214 (7), the court, after hearing, may deny the request or authorize
215 the requested additional sale on such terms as the court
216 determines are fair and reasonable, subject to the following
217 limitations:

218 (a) A sale authorized under this subsection may occur
219 only after the purchase prices for all interests subject to sale
220 under subsections (1) through (6) have been paid into court and



221 those interests have been reallocated among the cotenants as
222 provided in those subsections; and

223 (b) The purchase price for the interest of a
224 nonappearing cotenant is based on the court's determination of
225 value under Section 6.

226 **SECTION 8. Partition alternatives.** (1) If all the
227 interests of all cotenants that requested partition by sale are
228 not purchased by other cotenants pursuant to Section 7, or if
229 after conclusion of the buyout under Section 7, a cotenant remains
230 that has requested partition in kind, the court must order
231 partition in kind unless the court, after consideration of the
232 factors listed in Section 9, finds that partition in kind will
233 result in manifest prejudice to the cotenants as a group. In
234 considering whether to order partition in kind, the court shall
235 approve a request by two or more parties to have their individual
236 interests aggregated.

237 (2) If the court does not order partition in kind under
238 subsection (1), the court must order partition by sale pursuant to
239 Section 10 or, if no cotenant requested partition by sale, the
240 court must dismiss the action.

241 (3) If the court orders partition in kind pursuant to
242 subsection (1), the court may require that one or more cotenants
243 pay one or more other cotenants amounts so that the payments,
244 taken together with the value of the in-kind distributions to the



245 cotenants, will make the partition in kind just and proportionate
246 in value to the fractional interests held.

247 (4) If the court orders partition in kind, the court must
248 allocate to the cotenants that are unknown, unlocatable or the
249 subject of a default judgment, if their interests were not bought
250 out pursuant to Section 7, a part of the property representing the
251 combined interests of these cotenants as determined by the court,
252 and this part of the property must remain undivided.

253 **SECTION 9. Considerations for partition in kind.** (1) In
254 determining under Section 8(1) whether partition in kind would
255 result in manifest prejudice to the cotenants as a group, the
256 court shall consider the following:

257 (a) Whether the heirs property practicably can be
258 divided among the cotenants;

259 (b) Whether partition in kind would apportion the
260 property in such a way that the aggregate fair market value of the
261 parcels resulting from the division would be materially less than
262 the value of the property if it were sold as a whole, taking into
263 account the condition under which a court-ordered sale likely
264 would occur;

265 (c) Evidence of the collective duration of ownership or
266 possession of the property by a cotenant and one or more
267 predecessors in title or predecessors in possession to the
268 cotenant who are or were relatives of the cotenant or each other;



269 (d) A cotenant's sentimental attachment to the
270 property, including any attachment arising because the property
271 has ancestral or other unique or special value to the cotenant;

272 (e) The lawful use being made of the property by a
273 cotenant and the degree to which the cotenant would be harmed if
274 the cotenant could not continue the same use of the property;

275 (f) The degree to which the cotenants have contributed
276 their pro rata share of the property taxes, insurance and other
277 expenses associated with maintaining ownership of the property or
278 have contributed to the physical improvement, maintenance or
279 upkeep of the property; and

280 (g) Any other relevant factor.

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

284 **SECTION 10. Open-market sale, sealed bids, or auction.** (1)

285 If the court orders a sale of heirs property, the sale must be an
286 open-market sale unless the court finds that a sale by sealed bids
287 or an auction would be more economically advantageous and in the
288 best interest of the cotenants as a group.

289 (2) If the court orders an open-market sale and the parties,
290 not later than ten (10) days after the entry of the order, agree
291 on a real estate broker licensed in this state to offer the
292 property for sale, the court must appoint the broker and establish
293 a reasonable commission. If the parties do not agree on a broker,



294 the court must appoint a disinterested real estate broker licensed
295 in this state to offer the property for sale and must establish a
296 reasonable commission. The broker shall offer the property for
297 sale in a commercially reasonable manner at a price no lower than
298 the determination of value and on the terms and conditions
299 established by the court.

300 (3) If the broker appointed under subsection (2) obtains
301 within a reasonable time an offer to purchase the property for at
302 least the determination of value:

303 (a) The broker must comply with the reporting
304 requirements in Section 11; and

305 (b) The sale may be completed in accordance with state
306 law other than this act.

307 (4) If the broker appointed under subsection (2) does not
308 obtain within a reasonable time an offer to purchase the property
309 for at least the determination of value, the court, after hearing,
310 may:

311 (a) Approve the highest outstanding offer, if any;

312 (b) Redetermine the value of the property and order
313 that the property continue to be offered for an additional time;
314 or

315 (c) Order that the property be sold by sealed bids or
316 at an auction.

317 (5) If the court orders a sale by sealed bids or an auction,
318 the court must set terms and conditions of the sale. If the court



319 orders an auction, the auction must be conducted under Section
320 11-21-27.

321 (6) If a purchaser is entitled to a share of the proceeds of
322 the sale, the purchaser is entitled to a credit against the price
323 in an amount equal to the purchaser's share of the proceeds.

324 **SECTION 11. Report of open-market sale.** (1) Unless
325 required to do so within a shorter time by Chapter 21, Title 11,
326 Mississippi Code of 1972, a broker appointed under Section 10(2)
327 to offer heirs property for open-market sale must file a report
328 with the court not later than seven (7) days after receiving an
329 offer to purchase the property for at least the value determined
330 under Section 6 or 10.

331 (2) The report required by subsection (1) must contain the
332 following information:

333 (a) A description of the property to be sold to each
334 buyer;

335 (b) The name of each buyer;

336 (c) The proposed purchase price;

337 (d) The terms and conditions of the proposed sale,
338 including the terms of any owner financing;

339 (e) The amounts to be paid to lienholders;

340 (f) A statement of contractual or other arrangements or
341 conditions of the broker's commission; and

342 (g) Other material facts relevant to the sale.



343 **SECTION 12.** **Uniformity of application and construction.** In
344 applying and construing this uniform act, consideration must be
345 given to the need to promote uniformity of the law with respect to
346 its subject matter among states that enact it.

347 **SECTION 13.** **Relation to Electronic Signatures in Global and**
348 **National Commerce Act.** This act modifies, limits and supersedes
349 the Electronic Signatures in Global and National Commerce Act, 15
350 U.S.C. Section 7001 et seq., but does not modify, limit or
351 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c),
352 or authorize electronic delivery of any of the notices described
353 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

354 **SECTION 14.** Section 11-21-5, Mississippi Code of 1972, is
355 amended as follows:

356 11-21-5. Any of the parties in interest, whether infants or
357 adults, may institute proceedings for the partition of lands or
358 for a partition sale thereof, by judgment of court as herein
359 provided, except that if the court determines that the property is
360 heirs property under the Uniform Partition of Heirs Property Act,
361 then such partition or sale must comply with the provisions of
362 Sections 1 through 13 of House Bill No. 528, 2018 Regular Session.

363 All persons in interest must be made parties except (a) in cases
364 where a part of the freehold is owned by persons owning a life
365 estate therein or a life tenancy therein subject to the rights of
366 remaindermen or reversioners, then, in such event, it shall only
367 be necessary that the person or persons owning or claiming a life



368 estate or life tenancy therein be made parties; and (b) in cases
369 where the partition is for the surface of the land only, it shall
370 not be necessary that persons owning divided or undivided
371 interests in the minerals in the land be made parties unless such
372 persons also have an interest in the surface of the land. An
373 infant, or person of unsound mind, may sue by next friend as in
374 other cases; but if the infant, or non compos mentis, have a
375 guardian, the guardian must appear as next friend, unless good
376 cause to the contrary be shown. Where an infant or non compos is
377 made a party defendant, the guardian, if any, of such infant or
378 non compos shall also be made a party, whether the infant or non
379 compos be resident or nonresident and whether the guardian be a
380 resident or a nonresident; and the said guardian may appear and
381 answer the complaint. The summons to the defendants, including
382 the guardian aforesaid, shall be made pursuant to the Mississippi
383 Rules of Civil Procedure. The word "guardian," where used in this
384 section, shall be held to apply also to all persons who, under the
385 laws of any other state or country, stand in that relation whether
386 known as curator, tutor, committee or conservator, or by whatever
387 other name or title such person may be known.

388 **SECTION 15.** This act shall take effect and be in force from
389 and after July 1, 2018.

