

By: Representatives Dortch, Johnson (94th),
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To: Judiciary A

HOUSE BILL NO. 1357

1 AN ACT TO CREATE "THE UNIFORM PARTITION OF HEIRS PROPERTY
2 ACT"; TO PROVIDE DEFINITIONS FOR SUCH; TO CREATE A UNIFORM
3 PROCEDURE FOR PARTITION OF PROPERTY IF SUCH PROPERTY IS HEIR
4 PROPERTY; TO PROVIDE THAT THIS ACT SUPPLEMENTS SECTIONS 11-21-1
5 THROUGH 11-21-45 GOVERNING PARTITION OF REAL PROPERTY; TO REQUIRE
6 APPRAISAL OF PROPERTY; TO CREATE A PROCEDURE FOR SUCH APPRAISAL;
7 TO REQUIRE NOTICE TO ALL INTERESTED PARTIES; TO AUTHORIZE AN HEIR
8 TO REQUEST A PARTITION BY SALE UNDER THIS ACT; AND FOR RELATED
9 PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
11 MISSISSIPPI:

12 **SECTION 1.** This act shall be known and may be cited as "The
13 Uniform Partition of Heirs Property Act."

14 **SECTION 2.** The following words shall have the meanings
15 described herein:

16 (1) "Ascendant" means an individual who precedes another
17 individual in lineage, in the direct line of ascent from the other
18 individual.

19 (2) "Collateral" means an individual who is related to
20 another individual under the law of intestate succession of this



21 state but who is not the other individual's ascendant or
22 descendant.

23 (3) "Descendant" means an individual who follows another
24 individual in lineage, in the direct line of descent from the
25 other individual.

26 (4) "Determination of value" means a court order
27 determining the fair market value of heirs' property as provided
28 by law or adopting the valuation of the property agreed to by all
29 co-tenants.

30 (5) "Heirs' property" means real property held in tenancy
31 in common that satisfies all of the following requirements as of
32 the filing of a partition action:

33 (a) There is no agreement in a record binding all
34 the co-tenants that governs the partition of the property;

35 (b) One or more of the co-tenants acquired title
36 from a relative, whether living or deceased; and

37 (c) Any of the following applies:

38 (i) 20 percent (20%) or more of the interests
39 are held by co-tenants who are relatives;

40 (ii) 20 percent (20%) or more of the interests
41 are held by an individual who acquired title from a relative,
42 whether living or deceased; or

43 (iii) 20 percent (20%) or more of the
44 co-tenants are relatives.



45 (6) "Partition by sale" means a court-ordered sale of the
46 entire heirs' property, whether by open-market sale, sealed bids,
47 or auction conducted under Section 11-21-11.

48 (7) "Partition in kind" means the division of heirs'
49 property into physically distinct and separately titled parcels.

50 (8) "Record" means information that is inscribed on a
51 tangible medium or that is stored in an electronic or other medium
52 and is retrievable in perceivable form.

53 (9) "Relative" means an ascendant, descendant, or
54 collateral or an individual otherwise related to another
55 individual by blood, marriage, adoption, or law of this state
56 other than this chapter.

57 **SECTION 3.** (1) In any action to partition real property,
58 the court shall first determine whether the property is heirs'
59 property. If the court determines that the property is heirs'
60 property, the property must be partitioned under this act unless
61 all of the co-tenants otherwise agree in a record.

62 (2) This act supplements Sections 11-21-1 through 11-21-45
63 governing partition of real property. If an heirs property action
64 is governed by this act, this act supersedes any other provisions
65 governing partition of real property that are inconsistent with
66 this act.

67 **SECTION 4.** (1) This act does not limit or affect the
68 method by which service of a petition in a partition action may be
69 made.



70 (2) If the plaintiff in a partition action seeks citation
71 by publication and the court determines that the property may be
72 heirs' property, the plaintiff, not later than the tenth (10th)
73 day after the date the determination is made, shall post, and
74 maintain while the action is pending, a conspicuous sign on the
75 property that is the subject of the action. The sign must state
76 that the action has commenced and identify the name and address of
77 the court and the common designation by which the property is
78 known. The court may require the plaintiff to publish on the sign
79 the name of the plaintiff and the known defendants.

80 **SECTION 5.** If the court appoints special commissioners as
81 otherwise authorized by law, each commissioner, in addition to the
82 requirements and disqualifications applicable to commissioners
83 under such law, must be impartial and may not be a party to or a
84 participant in the action.

85 **SECTION 6.** (1) Except as provided by subsection (2) or
86 (3) of this section, if the court determines that the property
87 that is the subject of a partition action is heirs' property, the
88 court shall first determine the fair market value of the property
89 by ordering an appraisal under subsection (4).

90 (2) If all co-tenants have agreed to the value of the
91 property or to another method of valuation, the court shall adopt
92 that value or the value produced by the agreed method of
93 valuation.



94 (3) If the court determines that the evidentiary value of
95 an appraisal is outweighed by the cost of the appraisal, the
96 court, after an evidentiary hearing, shall determine the fair
97 market value of the property and send notice to the parties of the
98 value.

99 (4) If the court orders an appraisal, the court shall
100 appoint a disinterested real estate appraiser to determine the
101 fair market value of the property assuming sole ownership of the
102 fee simple estate. On completion of the appraisal, the appraiser
103 shall file a sworn or verified appraisal with the court.

104 (5) If an appraisal is conducted under subsection (d), not
105 later than the 10th day after the date the appraisal is filed, the
106 court shall send notice to each party with a known address,
107 stating:

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

109 (b) That the appraisal is available at the clerk's
110 office; and

111 (c) That a party may file with the court an
112 objection to the appraisal not later than the thirtieth (30th) day
113 after the date notice is sent, stating the grounds for the
114 objection.

115 (6) If an appraisal is filed with the court under
116 subsection (4), the court shall conduct a hearing to determine the
117 fair market value of the property not earlier than the thirtieth
118 (30th) day after the date a copy of the notice of the appraisal is



119 sent to each party under subsection (5), whether or not an
120 objection to the appraisal is filed under subsection (5)(c). In
121 addition to the court-ordered appraisal, the court may consider
122 any other evidence of value offered by a party.

123 (7) After a hearing under subsection (6), but before
124 considering the merits of the partition action, the court shall
125 determine the fair market value of the property and send notice to
126 the parties of the value.

127 **SECTION 7.** (1) If any co-tenant requested partition by
128 sale, after the determination of value under section 5 of this
129 act, the court shall send notice to the parties that any co-tenant
130 except a co-tenant that requested partition by sale may buy all
131 the interests of the co-tenants that requested partition by sale.

132 (2) Not later than the forty-fifth (45th) day after the
133 date notice is sent under subsection (1), any co-tenant except a
134 co-tenant that requested partition by sale may give notice to the
135 court that the co-tenant elects to buy all the interests of the
136 co-tenants that requested partition by sale.

137 (3) The purchase price for each of the interests of a
138 co-tenant that requested partition by sale is the value of the
139 entire parcel determined under Section 5 of this act multiplied by
140 the co-tenant's fractional ownership of the entire parcel.

141 (4) After the period provided by subsection (2) of this
142 section expires:



143 (a) If only one co-tenant elects to buy all the
144 interests of the co-tenants that requested partition by sale, the
145 court shall notify all the parties of that fact;

146 (b) If more than one co-tenant elects to buy all the
147 interests of the co-tenants that requested partition by sale, the
148 court shall:

149 1. Allocate the right to buy those
150 interests among the electing co-tenants based on each electing
151 co-tenant's existing fractional ownership of the entire parcel
152 divided by the total existing fractional ownership of all
153 co-tenants electing to buy; and

154 2. Send notice to all the parties of
155 that fact and of the price to be paid by each electing co-tenant;
156 or

157 (c) If no co-tenant elects to buy all the interests
158 of the co-tenants that requested partition by sale, the court
159 shall:

160 1. Send notice to all the parties of
161 that fact; and

162 2. Resolve the partition action as
163 described by this act.

164 (5) If the court sends notice to the parties under
165 subsection (4) (a) or (b), the court shall set a date, not earlier
166 than the sixtieth (60th) day after the date notice was sent, by



167 which an electing co-tenant must pay the co-tenant's apportioned
168 price into the court. After that date:

169 (a) If all electing co-tenants timely pay their
170 apportioned price into court, the court shall:

171 1. Issue an order reallocating all the
172 interests of the co-tenants; and

173 2. Disburse the amounts held by the
174 court to the persons entitled to them.

175 (b) If no electing co-tenant timely pays its
176 apportioned price, the court shall resolve the partition action
177 under Section (1) or (2) as if the interests of the co-tenants
178 that requested partition by sale were not purchased; or

179 (c) If one (1) or more but not all of the electing
180 co-tenants fail to pay their apportioned price on time, the court
181 shall give notice to the electing co-tenants that paid their
182 apportioned price of the interest remaining and the price for all
183 that interest.

184 (6) Not later than the 20th day after the date the court
185 gives notice under subsection (5)(c), any co-tenant that paid may
186 elect to purchase all of the remaining interest by paying the
187 entire price into the court. After that period expires:

188 (a) If only one co-tenant pays the entire price for
189 the remaining interest, the court shall:

190 1. Issue an order reallocating the
191 remaining interest to that co-tenant;



192 2. Promptly issue an order reallocating
193 the interests of all of the co-tenants; and

194 3. Disburse the amounts held by the
195 court to the persons entitled to the amounts;

196 (b) If no co-tenant pays the entire price for the
197 remaining interest, the court shall resolve the partition action
198 as provided under Section (1) or (2) as if the interests of the
199 co-tenants that requested partition by sale were not purchased; or

200 (c) If more than one (1) co-tenant pays the entire
201 price for the remaining interest, the court shall:

202 1. Reapportion the remaining interest
203 among those paying co-tenants, based on each paying co-tenant's
204 original fractional ownership of the entire parcel divided by the
205 total original fractional ownership of all co-tenants that paid
206 the entire price for the remaining interest;

207 2. Promptly issue an order reallocating
208 all of the co-tenants' interests;

209 3. Disburse the amounts held by the
210 court to the persons entitled to the amounts; and

211 4. Promptly refund any excess payment
212 held by the court.

213 (7) Not later than the forty-fifth (45th) day after the
214 date the court sends notice to the parties as provided under this
215 section, any co-tenant entitled to buy an interest under this
216 section may request the court to authorize the sale as part of the



217 pending action of the interests of co-tenants named as defendants
218 and served with the complaint but that did not appear in the
219 action.

220 (8) If the court receives a timely request under
221 subsection (7) of this section, the court, after hearing, may deny
222 the request or authorize the requested additional sale on such
223 terms as the court determines are fair and reasonable, subject to
224 the following limitations:

225 (a) A sale authorized under this subsection may
226 occur only after the purchase prices for all interests subject to
227 sale under subsections (a) through (f) have been paid into court
228 and those interests have been reallocated among the co-tenants as
229 provided in those subsections; and

230 (b) The purchase price for the interest of a
231 nonappearing co-tenant is based on the court's determination of
232 value under this act.

233 **SECTION 8.** (1) If all the interests of all co-tenants
234 that requested partition by sale are not purchased by other
235 co-tenants, a co-tenant that has requested partition in kind
236 remains, the court shall order partition in kind unless the court,
237 after consideration of the factors listed in this act, finds that
238 partition in kind will result in substantial prejudice to the
239 co-tenants as a group. In considering whether to order partition
240 in kind, the court shall approve a request by two or more parties
241 to have the requesting parties' individual interests aggregated.



242 (2) If the court does not order partition in kind under
243 this act, the court shall order partition by sale as provided in
244 this act or, if no co-tenant requested partition by sale, the
245 court shall dismiss the action.

246 (3) If the court orders partition in kind under this act,
247 the court may require that one (1) or more co-tenants pay one or
248 more other co-tenants amounts so that the payments, taken together
249 with the value of the in-kind distributions to the co-tenants,
250 will make the partition in kind just and proportionate in value to
251 the fractional interests held.

252 (4) If the court orders partition in kind, the court shall
253 allocate to the co-tenants that are unknown, unlocatable, or the
254 subject of a default judgment, if those co-tenants' interests were
255 not bought out, a part of the property representing the combined
256 interests of those co-tenants as determined by the court, and that
257 part of the property shall remain undivided.

258 **SECTION 9.** (1) In determining whether partition in kind
259 would result in substantial prejudice to the co-tenants as a
260 group, the court shall consider the following:

261 (a) Whether the heirs' property practicably can be
262 divided among the co-tenants;

263 (b) Whether partition in kind would apportion the
264 property in such a way that the aggregate fair market value of the
265 parcels resulting from the division would be materially less than
266 the value of the property if the property were sold as a whole,



267 taking into account the condition under which a court-ordered sale
268 likely would occur;

269 (c) Evidence of the collective duration of ownership
270 or possession of the property by a co-tenant and one (1) or more
271 predecessors in title or predecessors in possession to the
272 co-tenant who are or were relatives of the co-tenant or each
273 other;

274 (d) A co-tenant's sentimental attachment to the
275 property, including any attachment arising because the property
276 has ancestral or other unique or special value to the co-tenant;

277 (e) The lawful use being made of the property by a
278 co-tenant and the degree to which the co-tenant would be harmed if
279 the co-tenant could not continue the same use of the property;

280 (f) The degree to which the co-tenants have
281 contributed the co-tenants' pro rata share of the property taxes,
282 insurance, and other expenses associated with maintaining
283 ownership of the property or have contributed to the physical
284 improvement, maintenance, or upkeep of the property; and

285 (g) Any other relevant factor.

286 (2) The court may not consider any one factor under this
287 section to be dispositive without weighing the totality of all
288 relevant factors and circumstances.

289 **SECTION 10.** (1) If the court orders a sale of heirs'
290 property, the sale must be an open-market sale unless the court
291 finds that a sale by sealed bids or at an auction would be more



292 economically advantageous and in the best interest of the
293 co-tenants as a group.

294 (2) If the court orders an open-market sale and the
295 parties, not later than the tenth (10th) day after the date the
296 order is entered, agree on a real estate broker to offer the
297 property for sale, the court shall appoint the broker and
298 establish a reasonable commission. If the parties do not agree on
299 a broker, the court shall appoint a disinterested real estate
300 broker to offer the property for sale and shall establish a
301 reasonable commission. The broker shall offer the property for
302 sale in a commercially reasonable manner at a price no lower than
303 the determination of value and on the terms and conditions
304 established by the court.

305 (3) If the broker appointed under the provisions of this
306 act obtains within a reasonable time an offer to purchase the
307 property for at least the value determined, :

308 (a) The broker shall comply with the reporting
309 requirements of this act; and

310 (b) The sale may be completed in accordance with
311 state law other than this chapter.

312 (4) If the broker appointed under the provisions of this
313 act does not obtain within a reasonable time an offer to purchase
314 the property for at least the determination of value, the court,
315 after hearing, may:

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



317 (b) Redetermine the value of the property and order
318 that the property continue to be offered for an additional time;
319 or

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

322 (5) If the court orders a sale by sealed bids or at an
323 auction, the court shall set terms and conditions of the sale. If
324 the court orders an auction, the auction must be conducted in the
325 manner provided by law for a sale made under execution.

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

329 **SECTION 11.** (1) Unless required to do so earlier by other
330 law governing the partition of real property, a broker appointed
331 under the authority of this act to offer heirs' property for
332 open-market sale shall file a report with the court not later than
333 the seventh (7th) day after the date an offer is received to
334 purchase the property for at least the value determined under this
335 act.

336 (2) The report required by subsection (1) must contain the
337 following information:

338 (a) A description of the property to be sold to each
339 buyer;

340 (b) The name of each buyer;

341 (c) The proposed purchase price;



- 342 (d) The terms and conditions of the proposed sale,
343 including the terms of any owner financing;
- 344 (e) The amounts to be paid to lienholders;
- 345 (f) A statement of contractual or other arrangements
346 or conditions of the broker's commission; and
- 347 (g) Other material facts relevant to the sale.

348 **SECTION 12.** In applying and construing this act,
349 consideration must be given to the need to promote uniformity of
350 the law with respect to the subject matter of this act among
351 states that enact a law based on the uniform act on which this
352 chapter is based.

353 **SECTION 13.** This act shall take effect and be in force
354 from and after July 1, 2019.

