

By: Representatives Bain, Dortch

To: Judiciary A

HOUSE BILL NO. 1151

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 may be cited as the Uniform Partition of Heirs Property Act.

18 **SECTION 2. Definitions.** In this act:

19 (1) "Ascendant" means an individual who precedes
20 another individual in lineage, in the direct line of ascent from
21 the other individual.

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



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

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

(4) "Determination of value" means a court order determining the fair market value of heirs property under Section 6 or 10 of this act or adopting the valuation of the property agreed to by all cotenants.

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

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

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

(C) Any of the following applies:

(i) Twenty percent (20%) or more of the interests are held by cotenants who are relatives;

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

(iii) Twenty percent (20%) or more of the cotenants are relatives.



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

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

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

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

SECTION 3. **Applicability; relation to other law.** (a) This act applies to partition actions filed on or after the effective date of this act.

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

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



72 **SECTION 4. Service; notice by posting.** (a) This act does

73 not limit or affect the method by which service of a complaint in
74 a partition action may be made.

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

85 **SECTION 5. Masters.** If the court appoints masters under

86 Section 11-21-15, each master, in addition to the requirements and
87 disqualifications applicable to masters in Title 11, Chapter 21,
88 Mississippi Code of 1972, must be disinterested and impartial and
89 not a party to or a participant in the action.

90 **SECTION 6. Determination of value.** (a) Except as otherwise

91 provided in subsections (b) and (c), if the court determines that
92 the property that is the subject of a partition action is heirs
93 property, the court shall determine the fair market value of the
94 property by ordering an appraisal pursuant to subsection (d).

95 (b) If all cotenants have agreed to the value of the
96 property or to another method of valuation, the court shall adopt



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

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

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

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

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

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

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty (30) days



122 after a copy of the notice of the appraisal is sent to each party
123 under subsection (e), whether or not an objection to the appraisal
124 is filed under subsection (e)(3). In addition to the
125 court-ordered appraisal, the court may consider any other evidence
126 of value offered by a party.

127 (g) After a hearing under subsection (f), but before
128 considering the merits of the partition action, the court shall
129 determine the fair market value of the property and send notice to
130 the parties of the value.

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

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

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



(d) After expiration of the period in subsection (b), the following rules apply:

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

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

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Section 8(a) and (b) of this act.

(e) If the court sends notice to the parties under subsection (d) (1) or (2), the court shall set a date, not sooner than sixty (60) days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order



170 reallocating all the interests of the cotenants and disburse the
171 amounts held by the court to the persons entitled to them.

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

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

181 (f) Not later than twenty (20) days after the court gives
182 notice pursuant to subsection (e)(3), any cotenant that paid may
183 elect to purchase all of the remaining interest by paying the
184 entire price into the court. After the twenty-day period, the
185 following rules apply:

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

192 (2) If no cotenant pays the entire price for the
193 remaining interest, the court shall resolve the partition action



under Section 8(a) and (b) of this act as if the interests of the cotenants that requested partition by sale were not purchased.

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

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

(h) If the court receives a timely request under subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale



under subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 6 of this act.

SECTION 8. Partition alternatives. (a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7 of this act, or if after conclusion of the buyout under Section 7 of this act, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 9 of this act, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two (2) or more parties to have their individual interests aggregated.

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

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



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

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

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

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

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

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



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

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

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

(7) Any other relevant factor.

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

SECTION 10. Open-market sale, sealed bids, or auction. (a)

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

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



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

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) The broker shall comply with the reporting requirements in Section 11 of this act; and

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

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

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

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

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

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the



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

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

SECTION 11. Report of open-market sale. (a) Unless
required to do so within a shorter time by Title 11, Chapter 21,
Mississippi Code of 1972, a broker appointed under Section 10(b)
of this act to offer heirs property for open-market sale shall
file a report with the court not later than seven (7) days after
receiving an offer to purchase the property for at least the value
determined under Section 6 or 10 of this act.

(b) The report required by subsection (a) must contain the
following information:

(1) A description of the property to be sold to each
buyer;

(2) The name of each buyer;

(3) The proposed purchase price;

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

(5) The amounts to be paid to lienholders;

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

(7) 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 USC Section 7001 et seq., but does not modify, limit, or supersede
351 Section 101(c) of that act, 15 USC Section 7001(c), or authorize
352 electronic delivery of any of the notices described in Section
353 103(b) of that act, 15 USC 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 this act. All persons in interest must
363 be made parties except (a) in cases where a part of the freehold
364 is owned by persons owning a life estate therein or a life tenancy
365 therein subject to the rights of remaindermen or reversioners,
366 then, in such event, it shall only be necessary that the person or
367 persons owning or claiming a life estate or life tenancy therein



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

388 **SECTION 15.** This act shall take effect and be in force from
389 and after July 1, 2020.

