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Partition of Heirs Property Act Summary

The Uniform Partition of Heirs Property Act addresses a problem faced by many middle to low-income families who own real property: dispossession of their land through a forced sale. For many of these families, real estate is their single most valuable asset. Rural African-American families have been hit especially hard. Following the the civil war, African-Americans acquired between sixteen and nineteen million acres of agricultural land by 1920. Today, African-Americans retain only about seven million acres of that land.

Most higher-income families engage in sophisticated estate planning, ensuring a smooth transfer of wealth to the next generation. In contrast, lower-income landowners are more likely to use a simple will to divide property among children, or to die intestate. Unless a property owner specifies a different form of ownership, the heirs of the owner will inherit real estate as tenants-in-common under state property statutes. A tenant-in-common may sell his or her interest without the consent of the co-tenants, making it easy for non-family members – including real estate speculators – to acquire an interest in the property.

To illustrate the problem, imagine a widow with three children who owns a small farm, including a farmhouse where she lives. Unless the widow makes other provisions in her estate plan, when she dies the three children will inherit the property as tenants-in-common. That is, the children will each own a one-third share of the undivided piece of real estate. Imagine further that two of the children would like to maintain their ownership of the farm, but the third child wants to convert his share into cash. Because his siblings cannot afford to buy him out, he sells his one-third interest to an unrelated real estate investor.

In a tenancy-in-common, any co-tenant may file an action with a court to partition the property. In resolving a partition action, the court has two main remedies available: partition-in-kind or partition-by-sale. A partition-in-kind physically divides the property into shares of equal value and gives each co-tenant full ownership of an individual share. However, if the tenants cannot agree on parcels of equal value, the court will often order a partition-by-sale, whereby the property is sold as a single parcel and the cash distributed to the co-tenants in equal shares.

Returning to our example, the investor can petition the court for a partition of the farm. If the property contains only one farmhouse, dividing it into shares of equal value would likely be difficult. Therefore, a court would likely order a partition-by-sale, forcing the two siblings to sell the property against their will. Even worse, forced sales often bring meager returns. The property could sell for a price well below market value, and the siblings would have little to show for their inheritance.

The Uniform Partition of Heirs Property Act (UPHPA) helps to solve the problem, while preserving a co-tenant's right to sell his or her share of property. It is important to note that the act only applies to heirs' property – one or more co-tenants must have received his or her property interest from a relative, and there must be no written agreement governing partition. If that is the case, the act requires certain protections when a co-tenant files for a partition order:

1. The co-tenant requesting the partition must give notice to all of the other co-tenants.

2. The court must order an appraisal to determine the property's fair market value. If any co-tenant objects to the appraised value, the court must hold a hearing to consider other evidence.

3. Any co-tenant (except the co-tenant who requests partition) may buy the interest of the selling co-tenant at the court-determined fair market value. The co-tenants have 45 days to exercise their right of first refusal, and if exercised, another 60 days in which to arrange for financing. If more than one co-tenant elects to buy the selling co-tenant's share, the court will pro-rate the seller's share among

the buyers according to their existing fractional ownership percentages.

4. If no co-tenant elects to purchase the selling co-tenant's share, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group. UPHPA specifies the factors a court must consider when determining whether partition-in-kind is appropriate.

5. If partition-in-kind is inappropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the co-tenants as a group, the court may order a sale by one of those methods.

In summary, the Uniform Partition of Heirs Property Act preserves the right of a co-tenant to sell his interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. If the other co-tenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind if feasible, and if not, a commercially reasonable sale for fair market value.

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