

OVERVIEW OF THE NEW UNIFORM PARTITION OF HEIRS PROPERTY ACT

PRESENTED BY THE CCCBA AND ACBA REAL ESTATE SECTIONS

Michael T. Beuselink
(925) 800-3032
mike@lawmtb.com

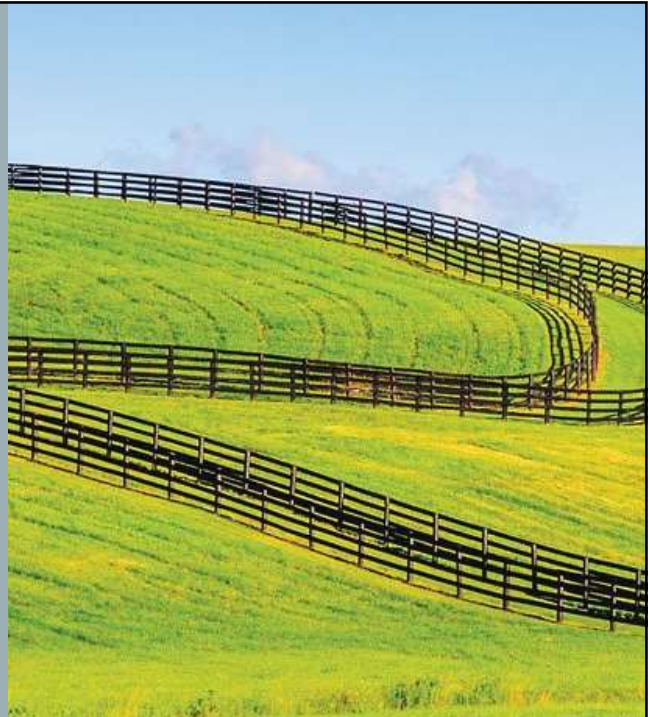
Marie G. Quashnock
(925) 516-1617
marie@aqalegal.com

David M. Austin
(925) 683-5100
daustin@austinlawpc.co

1

OVERVIEW

Historical Background
Uniform Partition of Heirs
Property Act
Probate and Estates
Considerations
Issues to Address
Q&A



2

OVERVIEW: HISTORICAL BACKGROUND OF UNIFORM PARTITION OF HEIRS PROPERTY ACT (THE “ACT”)

- Circumstances under Prior Law
- Socio-Economic impacts of Prior Law
- The Act’s Key Reforms
- Status of Passage of the Act Nationwide

3

PRIOR LAW

- State intestacy laws designate tenancies-in-common as default ownership structure for inherited properties
- Why “heir’s property” (or “heirs property”)?
- Problems with default law on inherited properties
 - Most poor and undereducated people do not make wills
 - Consequently, most real property in amongst these families passes through intestacy
 - Over time, each family’s fractional share interest is diluted with each successive generation
 - With many fractional owners, one vulnerable owner can sell their interest to a developer in order to force a sale of the property

4

PROBLEMS WITH PARTITION BY SALE

- Some states, particularly in the South, require a “forced sale”
- Partition sales are treated as foreclosure or execution sale
- Often, sales prices are well below fair market value
 - See Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1, 34–36 (2014) (<https://www.law.ua.edu/pubs/lrarticles/Volume%2066/Issue%201/Mitchell.pdf>)
- Potential buyers may not even know sales are occurring or have an opportunity to visit and inspect the property prior to sale
- In some states, forced sale procedures have been described as “calculated not to attract bidders but to satisfy formal requirements.”
 - Lynn M. LoPucki, *A General Theory of the Dynamics of the State Remedies/Bankruptcy System*, 1982 WIS. L. REV. 311, 317 (1982)

5

PUBLIC NOTICE OF TRUSTEE'S SALE (FORECLOSURE)

T.S. No: 812W-019320 Title Order No. 05944999
 APN: 068-074-007-3 Property Address: 604 KEAN AVENUE, ANTIOCH, CA 94509-2733 **NOTICE OF TRUSTEE'S SALE**

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED ABOVE IS NOT ATTACHED TO THE RECORDED OR PUBLISHED COPY OF THIS DOCUMENT BUT ONLY TO THE COPIES PROVIDED TO THE TRUSTEES. IF YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 10/21/2016, UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER. A public auction sale of the Trustor's interest will be made to the highest bidder for lawful money of the United States, payable at the time of sale in cash, cashier's check drawn on a state or national bank, cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale. Trustor: JUNITA A. HUCKABY, A SINGLE PERSON Duly Appointed Trustee: PLM LOAN MANAGEMENT SERVICES, INC. Recorded 11/1/2016, as Instrument No. 2016-0234751-00, of Official Records in the office of the Recorder of Contra Costa County, California, date of Sale: 6/21/2022 at 9:00 AM Place of Sale: Auction.com Room Pleasant Hill Community Center, 320 Civic Drive, Pleasant Hill, CA 94523 Amount of unpaid balance and other charges: \$296,436.86 (estimated as of the date publication date)

Street Address or other common designation of real property: 604 KEAN AVENUE, ANTIOCH, CA 94509-2733 A.P.N.: 068-074-007-3 The undersigned trustee procains any identity for any

6

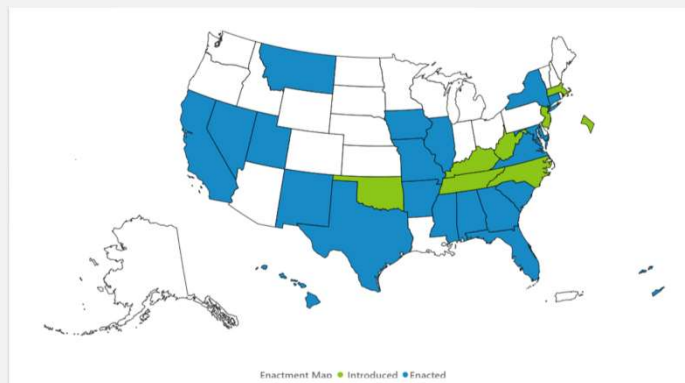
THE ACT'S KEY REFORMS

- Buyout of Cotenant That Petitioned Court for Partition by Sale
 - Preserve family or “legacy” properties
 - Purchase price is at the fair market value of the partitioning co-tenant’s fractional share
- Bolstering Preference for Partition in Kind
 - Rejects “economics only” test
 - Allows for consideration of “special” characteristics
- Revamped Sales Procedure Designed to Yield Higher Sales Prices
 - Allow all co-tenants to obtain and retain wealth associated with ownership of the property
 - “Open market sale” is preferred sale procedure

7

NATIONWIDE ADOPTION OF THE ACT

- Adopted (or Substantially Adopted) in 21 States
- Introduced for Adoption in 8 Additional States



8

UNIFORM PARTITION OF HEIRS PROPERTY ACT (THE “ACT”)

- Co-owner of “Heirs Property” has right to buy out any co-owner who files for partition by sale.
- Sets a procedure to determine fair market value (“FMV”), buyout price and complete purchase.
- Effective Date Jan. 1, 2022.
- Changes the rule of absolute right to force sale of property.
- C.C.P. §§ 874.311 *et seq.*

9

THRESHOLD REQUIREMENTS

- Applies only to partition actions filed after January 1, 2022 - not retroactive.
- Must qualify as “Heirs Property.”
- No agreement exists between the cotenants regarding partition. *Id.*

C.C.P. § 874.313

10

WHAT IS “HEIRS PROPERTY”?

- Heirs Property includes property acquired through inheritance or intro-vivos gift, if:
 - 20% or more interests held by “Relatives”; or
 - At least one individual who acquired from a “Relative” owns 20% or more; or
 - 20% or more owners are “Relatives.”

C.C.P. § 874.312(e)

11

BROAD DEFINITION OF “RELATIVE”

- Ascendants, i.e. parents, grandparents;
- Decendants, i.e. children, grandchildren; and
- “Collateral” relations, e.g. spouses, domestic partners, uncles, aunts, nieces, nephews, in-laws, adopted, stepchildren, foster children, and more, provided they are related under the laws of intestate succession.

C.C.P. § 874.312(i)

12

INITIAL DETERMINATION OF HEIRS PROPERTY

- If Court determines property is an Heirs Property:
 - Court must determine the FMV.
 - Court appoints a disinterested real estate appraiser to prepare and file sworn appraisal.
 - Court must accept FMV if all parties agree.
 - Court can decline to order appraisal if evidentiary value of appraisal outweighed by cost.

C.C.P. § 874.316

13

HEARING RE FMV

- Court sends notice not later than 10 days after appraisal filed.
- Any party may object within 30 days.
- After 30 days, Court sets hearing to consider objections and any other evidence of value.
- Court notifies parties of FMV after the hearing.

C.C.P. § 874.316

14

NOTICE AND EXERCISE OF PURCHASE OPTION

- Applies only to co-owners not requesting partition by sale.
- Must be exercised within 45 days.
- Purchase price is fractional interest multiplied by FMV.
- If only one elects to purchase, that party can purchase all selling parties' interests.
- If more than one elects, Court allocates right to purchase. CCP §
- If no one elects, Court proceeds with partition by sale (or in kind if applicable).

C.C.P. § 874.317

15

COURT-FACILITATED PURCHASE

- Parties to deposit funds in Court within 60 days.
- If all funds received, Court reallocates interests and disburses funds.*
- If no funds, Court proceeds with partition by sale (or in kind if applicable).
- If party fails to deposit funds, any other party has 20 days to purchase remaining interest.
- If more than one decides to purchase, Court reapportions remaining interest, then reallocates interests and disburses funds.*
- If no one elects to purchase remaining interest, Court proceeds with partition by sale (or in kind if applicable).

***No procedure for partition offsets!**

C.C.P. § 874.321.5

16

PARTITION BY SALE

- If the Court orders the sale of an Heirs Property, the Act limits the apportionment of costs of partition:

In an action for partition of heirs property, the court may apportion the costs of partition, including an appraisal fee, pursuant to Section 874.040, except that the Court shall not apportion the costs of partition to any party that opposes partition unless doing so is equitable and consistent with the purposes of this chapter.

C.C.P. § 874.320

17

THE ACT FOR TRUST AND ESTATE ADMINISTRATION

GREETINGS PROFESSOR FALKEN

HELLO

A STRANGE GAME.
THE ONLY WINNING MOVE IS
NOT TO PLAY.

HOW ABOUT A NICE GAME OF CHESS?

18

PARTITIONS IN ESTATE ADMINISTRATION

- Probate Code § 11950(a) allows for partition to avoid distribution of undivided interests to beneficiaries
- Limitations on action in probate courts. Probate Code § 11950(b).
- Personal representative may sell the property if more equitable. Probate Code § 11953(a)
 - Same manner as other sales during estate administration.
- NOTE: 11950 and 11953 do NOT currently provide for partition procedures under the Act, but rather that they must be “equitable” and pursuant to the sale procedures under the Probate Code. Partition of property held solely by the personal representative are NOT subject to the Act’s procedures.

19

PARTITIONS FOR TRUSTS

- Partition procedures for trustee-held property not subject to the Act’s procedures.
- Trustee powers: Probate Code §§ 16226 et seq.
 - Divide property
 - Sell property (public or private)
 - Exchange property
 - Partition and subdivide property
 - Borrow against property
 - Adjust differences in valuation on exchange or partition
- On termination of a trust, the beneficiaries become co-owners and their rights may be determined by a partition action even without an actual conveyance of the property by the trustee. *Young v. Hessler* (1945) 72 Cal.App. 2d 67, 70.

20

COMMON PROBATE HYPOTHETICAL

- Family home is the only significant Estate asset.
- Two beneficiaries / heirs.
- One desires to keep the family home, and the other wants to sell.
- Probate administration

Options for Personal Representative:

1. Sell the property. Distribute the proceeds.
2. Distribute the property.

21

OPTIONS TO AVOID DISPUTES

- Arrange for sibling buyout and/or taking security.
- Obtain agreement for an appraisal process (multiple appraisers if necessary).
- Borrow against property and distribute in kind.
- Distribute to multiple beneficiaries only as last resort
- Written agreement among beneficiaries
 - ROFR / waiver of partition (and recorded memorandum)
 - LLC with operating agreement
 - LP agreement

22

ESTATE PLANNING TO AVOID PARTITION DISPUTES

- Single beneficiary for property inheritance.
- Life estate to one beneficiary.
- Bequest contingent upon agreement to waive right of partition / provide for appraisal and buyout process.

23

ISSUES AND SOLUTIONS

- The Probate Code does not provide for procedures under the Act for either probate or trust administration.
- Act does not prevent the creation of heirs property issues.
- Speculators
- Fees, costs, and delays
 - Appraisal
 - Attorneys still needed -- no Judicial Council forms or templates.
 - Court unfamiliarity
 - Minimum time from filing to get order for distribution
- Quiet title claims will persist.

24

ISSUES AND SOLUTIONS

- New York: Detailed statute requiring early Mandatory Settlement Conference within 60 days after filing of the complaint. Notices with specific information to be provided by the court. No default if defendant files answer within 30 days after appearing at MSC.
- Broker Authority
 - Discretion regarding managing process of sale and distributions.
 - Attorney fees for reporting to the court?
- Buyouts remain inaccessible / few loan options.
- The Act controls over existing partition statutes and must be uniform in application among states that enact it.
- Lack of public understanding.

25

Q&A

26

RESOURCES

- Uniform Law Commission

Partition of Heirs Property Act

(<https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>)

- American Bar Association

Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act

(https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act/)

27

THANK YOU!

Additional questions?

Marie G. Quashnock | (925) 516-1617 | marie@aqalegal.com

David M. Austin | (925) 683-5100 | daustin@austinlawpc.co

Mike Beuselink | 925-800-3032 | mike@lawmtb.com

28